UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 12, 2016 at 3:00 p.m.

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1. 15-28301-E-13 APN-1 | RICHARD/PAULA CUMMINGS Mary Ellen Terranella | OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 12-7-15 [14]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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.

The court's decision is to continue the Objection to 3:00 p.m. on January 26, 2016.

Wells Fargo Bank N.A., dba Wells Fargo Dealer Services, the Creditor, opposes confirmation of the Plan on the basis that the plan does not provide for the full amount of the Creditor's secured claim. The Debtor is trying to value the secured claim of the Creditor without filing a Motion to Value.

On December 29, 2015, the Debtor filed a Motion to Value Collateral of the Creditor. Dckt. 24. The Motion is set for hearing on January 26, 2016 at 3:00 p.m.

Due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection is continued to 3:00 p.m. on January 26, 2016.

2. 15-28301-E-13 DPC-1 RICHARD/PAULA CUMMINGS Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-9-15 [20]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney on December 9, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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.

The court's decision is to continue the hearing on the Objection to Confirmation to 3:00 p.m. on January 26, 2016.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor has failed to file tax returns during the 4-year period preceding the filing of the instant case, specifically, 2012, 2013, and 2014.

2. The Debtor's plan relies on the Motion to Value Collateral of Wells Fargo Dealer Services.

On December 29, 2015, the Debtor filed a Motion to Value Collateral of the Creditor. Dckt. 24. The Motion is set for hearing on January 26, 2016 at 3:00 p.m.

Due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection is continued to 3:00 p.m. on January 26, 2016.

3. 15-29403-E-13 ROBERT BELLUOMINI
DBJ-1 Douglas Jacobs

MOTION TO VALUE COLLATERAL OF BANNER BANK
12-10-15 [10]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Motion to Value secured claim of Banner Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Robert Belluomini ("Debtor") to value the secured claim of Banner Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 22670 Meadowlark, Orland, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 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).

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 that creditor's secured claim (rights and interest in collateral), that 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $100,860.00. Creditor's second deed of trust secures a claim with a balance of approximately $32,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Robert Belluomini ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Banner Bank secured by a second in priority deed of trust recorded against the real property commonly known as 22670 Meadowlark, Orland, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $90,000.00 and is encumbered by senior liens securing claims in the amount of $100,860.00, which exceed the value of the Property which is subject to Creditor's lien.

4. 15-28605-E-13 JODY/JOY SILVA — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Michael Croddy — 12-16-15 [14]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's plan relies on Motions to Value Collateral of Santander Consumer, USA.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Santander Consumer, USA. However, the Debtor has failed to file a Motion to Value the Collateral of Santander Consumer, USA. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

5. 10-46506-E-13 JOSEPH/SHIRLEY ZINK
DPC-3 Douglas Jacobs

OBJECTION TO CLAIM OF DANIEL HEAL PLUMBING, CLAIM NUMBER 8-1 AND/OR OBJECTION TO CLAIM OF DANIEL HEAL PLUMBING, CLAIM NUMBER 12-1
11-17-15 [208]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on November 17, 2015. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to Proof of Claim Number 12-1 of Daniel Heal Plumbing is sustained and the claim is disallowed in its entirety.

The Objection to Proof of Claim Number 8-1 of Daniel Heal Plumbing is sustained and the priority portion of the claim

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Daniel Heal Plumbing ("Creditor"), Proofs of Claim No. 8-1 and 12-1 ("Claim"), Official Registry of Claims in this case. The Claim No. 12-1 is asserted to be unsecured in the amount of $903.51, $503.50 which is alleged to be priority under 11 U.S.C. § 507. Objector asserts that the Claim is a duplicate of Proof of Claim Number 8-1.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The court concurs with the Trustee that Proof of Claim No. 12-1 is a duplicate of Proof of Claim No. 8-1. Both claims assert unsecured claim in the amount of $903.51 with a priority amount of $503.50. Both claims provide the same supporting evidence. Furthermore, and notably, the two claims are signed on the same date. In short, the two claims are identical

Based on the evidence before the court, the creditor's Proof of Claim No. 12-1 is disallowed in its entirety as duplicative of Proof of Claim No. 8-1. The Objection to the Proof of Claim is sustained.

As to the Trustee's argument that the Creditor is not entitled to priority treatment under 11 U.S.C. § 507(a), the court concurs with the Trustee that the Proof of Claim No. 8-1 does not qualify as a priority claim. The Creditor asserts that pursuant to 11 U.S.C. § 507(a)(4), the claim is entitled to priority as a commission earned within 180 days of filing.

11 U.S.C. § 507(a)(4) provides:

> (4) Fourth, allowed unsecured claims, but only to the extent of $12,4751 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for--

> (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
>
> (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

As noted by the Trustee, the claim must have been earned within 180 days before the date of the filing of the petition. The instant petition was filed on October 5, 2010. A review of Proof of Claim No. 8-1 shows that the plumbing work done was most recently done on December 22, 2009, which is more than 180 days prior to the filing of the instant case.

Therefore, based on the evidence, the Creditor’s Proof of Claim 8-1 is not entitled to priority status and is disallowed in its entirety the priority portion of the claim.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Daniel Heal Plumbing, Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 12-1 of Daniel Heal Plumbing is sustained and the claim is disallowed in its entirety, without prejudice to the rights of the creditor pursuant to Proof of Claim Number 8-1.
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8-1 of Daniel Heal Plumbing is sustained and the claim is disallowed for the priority status for any amount of said claim.

6. 15-26412-E-13 NICHOLAS/SAMANTHA BAKER — MOTION TO CONFIRM PLAN
PLC-2 Peter Cianchetta — 11-4-15 [46]
DEBTOR DISMISSED: 11/5/2015
JOINT DEBTOR DISMISSED
11/5/2015

Final Ruling: No appearance at the January 12, 2016 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

7. 15-26512-E-13 MATTHEW CORSAUT **MOTION TO CONFIRM PLAN**
GW-2 Gary Gale **11-6-15 [43]**

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2015. By the court's calculation, 67 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the 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 Motion to Confirm the Amended Plan is granted.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 6, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

8. 15-28322-E-13 LISA TOLBERT
DPC-1 Scott Johnson

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-9-15 [17]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor’s plan relies on Motions to Value Collateral of Santander Consumer, USA and Milestonz Jewelers.

The Trustee’s objections are well-taken.

A review of the Debtor’s plan shows that it relies on the court valuing the secured claims of Santander Consumer, USA and Milestonz Jewelers. However, the Debtor has failed to file a Motions to Value the Collateral of these creditors. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee’s objection is sustained.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

9. 14-30925-E-13 JAMES KENNEDY
DPC-4 Thomas Amberg

OBJECTION TO CLAIM OF MOUNTAIN LION ACQUISITIONS, INC., CLAIM NUMBER 10
11-17-15 [84]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on November 17, 2015. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to Proof of Claim number 10 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Mountain Lion Acquisitions, Inc. ("Creditor"), Proof of Claim No. 10-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $11,691.21. 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 is March 11, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual

basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was March 11, 2015. The Creditor's Proof of Claim was filed July 27, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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 shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Mountain Lion Acquisitions, Inc., Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 10 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

10. 14-30925-E-13 JAMES KENNEDY
DPC-5 Thomas Amberg

OBJECTION TO CLAIM OF MOUNTAIN LION ACQUISITIONS, INC., CLAIM NUMBER 11
11-17-15 [89]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on November 17, 2015. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to Proof of Claim number 11 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Mountain Lion Acquisitions, Inc. ("Creditor"), Proof of Claim No. 11-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $10,969.61. 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 is March 11, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual

basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The deadline for filing a Proof of Claim in this matter was March 11, 2015. The Creditor's Proof of Claim was filed August 3, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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 shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Mountain Lion Acquisitions, Inc., Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 11 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

11. 15-28525-E-13 DPC-1 CORNELL/BARBARA TINDALL Nicholas Lazzarini

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-16-15 [18]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's plan is not their best effort. The Debtor are above median income. Debtor's Schedule J lists a car payment of $596.14. Class 2 of the plan lists a 2011 Kia Sorento and provides for the payment of $596.14 through the plan. The Debtor testified at the Meeting of Creditors that both payments represent the same vehicle. It appears that the net income on Schedule J should be $1,849.50 and the plan payment should be higher.

The Trustee's objections are well-taken. It appears that based on the Schedule J filed by the Debtor, the proposed plan, and the testimony of the

Debtor at the Meeting of Creditors indicates that there is additional income that should be applied to the plan. The Debtor's Schedule J includes the car payment expense which is then recounted in the plan under Class 2. This is an improper duplication of expenses. Correcting this, there is an additional $596.14 in income that could be applied to plan payments. Under the proposed plan, general unsecured claimants receive only a 26% dividend. With this additional income, that dividend may be higher. As such, the proposed plan does not appear to be the Debtor's best efforts. 11 U.S.C. § 1325(b).

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

12. 15-28629-E-13 LORRAINE RUSSELL
DPC-1 Michael O Hays

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
12-9-15 [16]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 9, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Discharge 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 Objection to Discharge is sustained.

David Cusick, Chapter 13 Trustee, ("Objector"), filed the instant Objection to Debtor's Discharge on December 9, 2015. Dckt. 16.

The Objector argues that Lorraine Russell ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on February 27, 2014. Case No. 14-21919. The Debtor received a discharge on July 1, 2014. Case No. 14-21919, Dckt. 16.

The instant case was filed under Chapter 13 on November 5, 2015.

The Debtor filed a non-opposition to the instant Objection on December 29, 2015. Dckt. 20.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on July 1,

2015, which is less than four-years preceding the date of the filing of the instant case. Case No. 14-21919, Dckt. 16. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-28629), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-28629, the case shall be closed without the entry of a discharge.

13. 12-21733-E-13 SHARAN SINGH
AVN-7 Anh Nguyen

MOTION TO RETAIN INSURANCE PROCEEDS TO REPAIR VEHICLE
11-11-15 [84]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2015. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

The Motion to Retain Insurance Proceeds to Repair Vehicle 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 Motion to Retain Insurance Proceeds to Repair Vehicle is granted.

Sharan Singh ("Debtor") filed the instant Motion to Retain Insurance Proceeds to Repair Vehicle on November 11, 2015. Dckt. 84. The Debtor seeks a court order to authorize the Trustee to release the remaining funds from the insurance proceeds to the Debtor.

The Debtor states that on February 13, 2015, Debtor's 2007 Pontiac Grad Prix ("Vehicle") was involved in an auto accident. Liberty Mutual Insurance Company, the Debtor's insurance company, determined that it would cost Debtor $4,332.97 to fix her car. Liberty Mutual Insurance Company sent two checks totaling $4,332.97 to the Trustee, one on March 23, 2015 ($2,856.40) and the other on April 5, 2015 ($1,476.57).

At the time of the accident, there was a secure loan on the Vehicle held by Santander Consumer USA Inc ("Creditor"). The Creditor filed a Motion for Relief on March 31, 2015. The court granted the Motion on May 5, 2015, and required that the Trustee disburse to Creditor the $2,856.40 of their remaining secured claim plus interest. According to the Debtor, there is approximately $1,476.57 remaining in proceeds. The Debtor requests that the court authorize the Trustee to release the proceeds to the Debtor. The Debtor states in her declaration that she is planning to use the insurance proceeds to start the repairs on her car.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 3, 2015.

The Bankruptcy Code permits Chapter 13 debtors, in their capacity as a fiduciary, to request the use of cash collateral. 11 U.S.C. § 363 states:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless–
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease–
> >
> > > (i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Here, the Debtor is requesting that the court authorize the Trustee to disburse the remaining $1,476.57 from the insurance proceeds to repair the Vehicle. The Trustee has already disbursed funds to satisfy the Creditor's remaining secured claim. The Trustee, in fact, does not oppose this Motion.

Therefore, in light of the Creditor having been paid its full secured claim, the Debtor seeking to use the remaining insurance funds for Vehicle repairs, and the Trustee not opposing, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Retain Insurance Proceeds to Repair Vehicle filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted. David Cusick, the Chapter 13 Trustee, is authorized to disburse to the Debtor the remaining insurance proceeds not to exceed

$1,500.00.

14. 13-35536-E-13 GARY/AIMEE HOURCAILLOU
PGM-2 Peter Macaluso

MOTION TO VALUE COLLATERAL OF COMMUNITYWIDE FEDERAL CREDIT UNION
12-11-15 [64]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 11, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim 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 Motion to Value secured claim of Community Wide Federal Credit Union ("Creditor") is granted and the secured claim is determined to have a value of $350.00.

The Motion filed by Gary and Aimee Hourcaillou ("Debtor") to value the secured claim of Community Wide Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a Culligan water conditioner ("Asset"). The Debtor seeks to value the Asset at a replacement value of $350.00 as of the petition filing date. As the owner, the 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).

The lien on the Assets's title secures a purchase-money loan incurred on April 11, 2011, which is more than 365 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $2,874.43.

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 $350.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Gary and Aimee Hourcaillou ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Community Wide Federal Credit Union ("Creditor") secured by an asset described as Culligan water conditioner ("Asset") is determined to be a secured claim in the amount of $350.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Asset is $350.00 and is encumbered by liens securing claims which exceed the value of the asset.

15. 14-31738-E-13 MICHELE SPENCER
TLA-1 Thomas Amberg

MOTION TO MODIFY PLAN
12-8-15 [27]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan.

Michele Spencer ("Debtor") filed the instant Motion to Confirm the Modified Plan on December 8, 2015. Dckt. 27.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 16, 2015. Dckt. 33. The Trustee states that the Debtor is an over median income debtor and must have a commitment period of 60 months. The Debtor's plan confirmed January 31, 2015 was for a period of 48 months as the plan was paying 100% to unsecured. However, the proposed plan here only proposes a 3% dividend but only for 48 months. The Trustee asserts that the commitment period should be 60 months.

DEBTOR'S REPLY

The Debtor filed a reply on December 16, 2015. Dckt. 36. The Debtor states that Debtor's counsel accidently did not change the commitment period to 60 months. The Debtor requests that the error be corrected in the order confirming.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken. Pursuant to 11 U.S.C. § 1325, the Debtor's commitment period should be 60 months due to the Debtor being an

above median income debtor and providing for only 3% dividend to unsecured claimants. The Debtor admits that this was a scrivener's error. This can be corrected in the order confirming the plan.

After reviewing the proposed plan and the accompanying papers and following the correction to the commitment period to 60 months, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the commitment period from 48 months to 60 months, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. 15-28638-E-13 DPC-1 | **JOSEPH TARR AND GINA CHAVES** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
Ashley Amerio | **12-16-15 [16]**

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Debtor may not be able to make the plan payments. Debtor's Schedule I indicates gross income for Debtor Joseph Tarr of $6,445.00. Schedule I further states that Debtor is receiving $2,720.00 per month in EDD Disability benefits, which will end December 1, 2015. The Debtor will use a severance package to fund the plan until he returns to work after the benefits end. The Debtor stated at the Meeting of Creditors that he does not have any of the income listed on Schedule I, column 1. Debtor also testified that the severance package he received was a

> total of $25,000.00. According to Schedule B, Debtor stated that the Debtor's total cash, bank and debit card balances at $4,759.74. Debtor does not appear to have the income listed on Schedule I or the severance package to fund the plan.

The Trustee's objections are well-taken. Based on the testimony provided for by the Debtor at the Meeting of Creditors, the Debtor admitted that Schedule I does not accurately reflect the Debtor's financial reality. In fact, the Debtor admitted that an entire column on Schedule I is no longer income. While the Debtor did submit a declaration concerning their income, the declaration concerned the calculations under the Means Test rather than the accuracy of the Debtor's Schedules. Additionally, the court cannot determine even if the plan is viable or feasible when the foundational sources of income for the Debtor, namely the severance package, is no longer accurate. The Trustee's objection is sustained as it appears, based on the information provided by the Debtor, that the Debtor cannot afford to make plan payments. 11 U.S.C. § 1325(a)(6).

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

17. 15-29038-E-13 KEVIN/COREN TRIGALES
AFL-1 Ashley Amerio

MOTION TO VALUE COLLATERAL OF ALLY FINANCIAL
12-4-15 [12]

Tentative Ruling: The Motion to Value the secured claim 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 4, 2015. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim 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 Motion to Value secured claim of Ally Financial ("Creditor") is granted, the value of the vehicle is $15,934.00 and Creditor's claim is oversecured.

The Motion filed by Kevin and Coren Trigales("Debtor") to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Kia Sorrento LX Sport Utility 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of

$15,934.00 as of the petition filing date. As the owner, the 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).

The Creditor filed an opposition to the instant Motion on December 23, 2015. Dckt. 31. The Creditor argues that the Debtor's valuation of the Vehicle is not the present value of the claim. The Creditor asserts that the correct value of the Vehicle is $22,050.00 based on the NADA Valuation of the Vehicle. The Creditor indicates in its opposition that Creditor's counsel contacted Debtor's counsel to arrange an appraisal of the Vehicle.

The Debtor's evidence consists of Debtor's conclusion that the vehicle is worth $15,934.00. No testimony is provided as to how that conclusion has been reached by Debtor. To testimony is provided as to the condition of the vehicle, any deferred maintenance or needed repairs.

Countering this conclusion, Creditor has provided the NADA Valuation Report, a recognized market guide for the value of vehicles. For a vehicle in clean, showroom ready, retail sales condition, NADA values the vehicle at $22,425.00.

On Schedule B, Debtor states that the $15,934.00 value is based on "kbb" (which the court interprets to be Kelly Blue Book, another trade guide for vehicle values recognized in the auto industry. However, the court is not provided with the Kelly Blue Book Valuation Report, but merely this reference on Schedule B.

The NADA valuation is for a 2012 KIA Sorento-V6 Utility 4D **SX** AWD. However, the Motion and Debtor's declaration state that it is an LX 4D sport utility vehicle. This is consistent with the information provided on Schedule B. Dckt. 1. The partially legible Retail Installment Contract filed as Exhibit A by Creditor only identifies the vehicle as a 2012 KiA Sorento. Dckt. 33. The Certificate of Title provided by Creditor as Exhibit B does not provide any additional information. *Id.*

The NADA website presented to the court by Creditor identifies the SX model to be the "top level," which in 2012 includes a headed wood-rim steering wheel. http://www.nadaguides.com/Cars/2012/Kia/Sorento. It appears from the NADA website that the LX model is the mid-level model.

It appears that the evidence presented for the NADA valuation is for the wrong model vehicle. While Debtor's testimony is limited to just the owner's value, it is evidence of value for the vehicle which Debtor testifies he owns. The court determines the value of the KIA Sorento which secures the claim of creditor has a value of $15,934.00.

The court determines that the secured claim of Ally Financial, for which the 2012 Kia Sorento is the collateral has a value of $15,934.00, and the balance of the claim is a general unsecured claim.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Kevin and Coren Trigales (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the value of the 2012 Kia Sorrento LX Sport Utility 4D which secures the claim of Ally Financial is $15,934.00, and is encumbered by a lien for a claim in excess of that amount. The secured claim of Ally Financial, for which the 2012 Kia Sorento is the collateral has a value of $15,934.00, and the balance of the claim is a general unsecured claim.

18. 15-29038-E-13 KEVIN/COREN TRIGALES
AFL-2 Ashley Amerio

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
12-4-15 [17]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Kevin and Coren Trigales ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 16454 County Road 85B, Esparto, California ("Property"). Debtor seeks to value the Property at a fair market value of $498,304.00 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).

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 that creditor's secured claim (rights and interest in collateral), that 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $554,012.14. Creditor's second deed of trust secures a claim with a balance of approximately $21,257.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kevin and Coren Trigales ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 16454 County Road 85B, Esparto, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $498,304.00 and is encumbered by senior liens securing claims in the amount of $554,012.14, which exceed the value of the Property which is subject to Creditor's lien.

19. 14-21142-E-13 LBG-11 THOMAS LISLE AND BARBARA TREAT Lucas Garcia

CONTINUED MOTION FOR COMPENSATION FOR LUCAS GARCIA, DEBTORS' ATTORNEY 9-14-15 [147]

Tentative Ruling: The Motion For Approval of Chapter 13 Debtor Counsel 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 14, 2015. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional 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 Motion for Allowance of Professional Fees is granted.

Lucas Garcia, the Attorney ("Applicant") for Thomas Lisle and Barbara Treat, the Chapter 13 Debtor, ("Client"), makes a Second and Final Request for the Allowance of Fees and Expenses in this case. FN.1.

FN.1. The court noted at the prior hearing that, while Applicant filed for § 330 Final Fees, the plan has only progressed 2 of the total 5 years provided

in the Confirmed Plan. More fees and costs will certainly be requested by Applicant. For the reasons discussed below, the court *sua sponte* treated this as an application for interim fees under 11 U.S.C. § 331. However, in the supplemental application, the Applicant explicitly confirms that this is a "final application." Dckt. 156. The court accepts this statement as an agreement by counsel to accept these final fees as the fixed fee for all services provided and to be provided through the end of this case.

The period for which the fees are requested is for the period November 7, 2013, through September 13, 2015. Applicant requests fees and costs in the amount of $5,107.06.

NOVEMBER 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on January 12, 2016 to allow the Applicant to provide task-billing. Dckt. 153.

SUPPLEMENTAL APPLICATION

On December 31, 2015, the Applicant filed a supplemental application which contained the necessary task billing. Dckt. 156.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including general case administration and filing various significant motions. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Motion to Confirm, Objection, Motion to Dismiss and General Correspondences: Applicant spent 5.8 hours in this category.

Motion to Vacate, Motion to Employ, and General Correspondences: Applicant spent 4.6 hours in this category.

Motion to Nominate Successor, Notice of Death of Debtor and General Correspondences: Applicant spent 3.6 hours in this category.

Motion to Approve Settlement and General Correspondences: Applicant spent 3.2 hours in this category.

Motion to Confirm, Objections, Order Submission, and General Correspondences: Applicant spent 7.2 hours in this category.

Motion to Approve Fees: Applicant spent 5.1 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Lucas Garcia	14.8	$225.00	$3,330.00
"Paralegal"	14.7	$115.00	$1,690.50
	0	$0.00	$0.00
Total Fees For Period of Application			$5,020.50

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	$4,089.50	$4,089.50
	$0.00	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	$4,089.50	

Costs and Expenses

Pursuant to prior interim applications, the court has allowed costs of

$387.14.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Mail		$78.45
Court Call		$60.00
Total Costs Requested in Application		$138.45

FEES AND COSTS & EXPENSES ALLOWED

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as on-line access to bankruptcy and state law and cases); phone, email, and facsimile; and secretarial support. The costs requested by Applicant include Court Call. No information has been provided to the court by Applicant that these cost items were extraordinary expenses than one would expect for Applicant providing professional services to Client to be changed in additional to the professional fees requested as compensation. The court disallows $60.00 of the requested costs.

Reduced Rate

Applicant seeks to be paid a single sum of $5,107.06 for its fees and expenses incurred for the Client. Second and Final Fees and Costs in the amount of $5,047.06 and prior Interim Costs in the amount of $387.14 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees, Costs and Expenses $5,047.06

pursuant to this Application and prior interim fees of $4,089.50 and interim costs of $387.14 as final fees pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Lucas Garcia (“Applicant”), Attorney for Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that Lucas Garcia is allowed the following fees and expenses as a professional of the Estate:

Lucas Garcia, Professional Employed by Chapter 13 Debtor

Fees and Expenses in the amount of $5,047.06

IT IS FURTHER ORDERED that the costs of $60.00 are not allowed by the court.

The Fees and Costs pursuant to this Applicant, and Fees in the amount of $4,089.50 and costs of $387.14 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

This final award of fees is for all legal services performed, and to be performed, by counsel for Debtor in this bankruptcy case.

20. 10-33944-E-13 ALAN/JILL MORI **CONTINUED OBJECTION TO NOTICE**
DPC-2 Peter Macaluso **OF MORTGAGE PAYMENT CHANGE**
7-16-15 [141]

No Tentative Ruling:

Local Rule 3007-1 Objection to Notice of Mortgage Payment Change - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on July 16, 2015. By the court's calculation, 47 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Notice of Mortgage Payment Change has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 and other parties in interest are entered.

The Objection to Mortgage Payment Change is xxxx.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Mortgage Payment Changes on July 16, 2015. Dckt. 141. The Trustee objects to Wells Fargo Bank, N.A. ("Creditor") Notice of Mortgage Payment Changes filed on April 9, 2015 and June 8, 2015.

Alan and Jill Mori ("Debtor") are in the 53rd month of their 60 month plan. The plan was filed on October 5, 2011 and the only creditor provided to receive further disbursements is the Creditor for the mortgage. Under the confirmed plan, Wells Fargo Home Mortgage is classified as a Class 1 claim with monthly contract installment payments of $1,900.00. The plan provides that if the loan modification is declined, the claim including any arrearages of Wells Fargo Home Mortgage shall be satisfied by the way of surrender of the property (which is Class 3 treatment under the confirmed Plan), with the qualification that entry of the order confirming the plan shall not modify the automatic stay (as it would normally for Class 3 claims).

The Trustee states that he has disbursed $85,500.00 in mortgage payments. The Trustee states that it is unclear if the Creditor has declined the loan modification. No Motion to Approve Loan Modification pursuant to the additional provisions of the plan has been filed. The Trustee objects to the Notice of Mortgage payment Change to determine if the loan modification has been declined and the property is now surrendered.

The Trustee states that the Sacramento County Property Tax claim had been paid in full, as evidenced by the letter from the County of Sacramento and the returned disbursement of $3,513.99 sent by the Trustee. Dckt. 144, Exhibit 3.

The Trustee asserts, that in the alternative, that if the Creditor or Debtor assert that the first objection is not valid to the notice of Mortgage Payment change, the Trustee objects to the changes because they appear to be based on an unexplained entry in the first Notice of Change, filed on April 9, 2015 where the actual physical payments posted in one month to the escrow total $54,200.75 for October 2014. The Trustee's payments to the Creditor totaled $66,500.00 through the end of October and $64,600.00 through the beginning of October 2014.

Creditor's Claim

Creditor filed a Proof of Claim No. 8 asserting a secured claim of $550,000.00 and claimed no arrears. The attached papers to the Proof of Claim reflect an initial interest rate of 5.250% and interest only payments of $2,406.25 until August 1, 2012 when the first principal and interest payment were due.

Debtor filed Current Income and Expenditures (Dckt. 126) where the Debtor's expenses do not indicate whether taxes and insurance are included in their mortgage payment but budget $25.00 monthly for insurance and $0.00 for taxes.

Creditor filed a notice of Mortgage Payment change on April 9, 2015 reflecting a mortgage payment effective May 1, 2015 of $2,552.14 ($2,726.00 principal and/or interest, $74.53 escrow, and $51.61 escrow shortage). The Escrow Account Disclosure Statement attached to the Notice of Mortgage Payment Change reflects a $619.27 escrow shortage and states Debtor's current principal and/or interest payment is $2,406.25 and the escrow payment is $0.02.

The Trustee states that the account history from April 2014 to December 2014 indicates there was an escrow balance as of April 2014 in the amount of -<$48,148.08> and an actual payment to escrow in October 2014 in the amount of $54,200.75. The actual escrow balance as of December 2014 is depicted as $2,702.90.

Based on the April 2015 Notice, the Creditor either entered in a loan modification with the Debtor about October 2014 or failed to properly credit payments received from the Trustee prior to that date.

The Trustee objects to the Notice in an attempt to resolve the amount of the mortgage payment, where filed unsecured claims have been paid the minimum percentage called for by the plan and before the Trustee pays a higher dividend to general unsecured claims as allowed under the plan.

DEBTOR'S RESPONSE

The Debtor filed a response on August 18, 2015. Dckt. 147. The Debtor responds by stating that Debtor's counsel requires additional time to meet with the Debtor and determine the status of the mortgage and determine what is needed to ensure that the case can proceed to discharge.

CREDITOR'S OPPOSITION

The Creditor filed on opposition to the instant Objection on August 18, 2015. Dckt. 149. FN.1. First, the Creditor states that the Debtor's loan modification application was denied on June 3, 2013. The Creditor asserts that its reading of the Additional Provisions is that if the loan modification is denied, the Debtor will amend their plan to provide for a surrender of the property.

FN.1. The court notes that the Opposition states that the Creditor's attorneys are from the firm of Pite Duncan, LLP in the upper right hand corner of the pleading. However, Pite Duncan, LLP has merged with another firm to become "Aldridge Pite, LLP." While the correct firm name is listed at the signature page, pursuant to Local Bankr. R. 2017-1(b)(2)(B), the correct name must be present in the upper left hand corner.

Additionally, the Creditor states that the Trustee has disbursed a total of $85,500.00 to the Creditor. The Creditor states that the first post-petition payment was received on November 30, 2011. The Creditor argues that the payment was held in suspense as it was not sufficient to complete a full payment. Once sufficient funds were received by the Trustee, those funds were applied to first post-petition payment date of June 1, 2010. The Creditor asserts that the post petition payments due are as follows:

Number of Payments	From	To	Monthly Payment	Total Payments
59	6/1/2010	4/1/2015	$2,406.25	$141,968.75
3	5/1/2015	7/1/2015	$3,552.14	$10,656.42
1	8/1/2015	8/1/2015	$3,583.14	$3,583.14
			TOTAL	$152,208.31

The Creditor states that, after the Trustee's disbursement, the Debtor remains $70,708.31 in post-petition defaults.

The Creditor states that upon initial review of the escrow statement, it appears that Creditor has been maintaining post-petition payments on taxes and insurance. The Creditor asserts that its counsel is looking into this matter and plans to supplement its opposition to address what escrow payments were made and when they were made. The Creditor states that it plans to work with the Trustee to address the concerns.

The Creditor requests either that the Objection is overruled or continued to address the issues raised by the Trustee.

SEPTEMBER 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 6, 2015. Dckt. 153. Supplemental responses were ordered to be served and filed on or before September 22, 2015.

The Parties were ordered to specifically address the mandatory, "shall," surrender treatment of Creditor's claim upon the denial of loan modification. The Creditor, in its response, shall address the escrow analysis, as well as an accounting of the payments received by the Trustee in this case. Any replies shall be filed and served on or before September 29, 2015.

DEBTOR'S REPLY

The Debtor filed a reply on September 29, 2015. Dckt. 161.

The Debtor first addresses the Additional Provision 7.02, Number 4 and states that the language unequivocally states that if the loan modification is denied, the Debtor would surrender the home.

The Debtor next addresses the "mandatory, 'shall,' surrender treatment of Creditor's claim upon denial of loan modification." After reviewing case law as to 11 U.S.C. § 1325(a)(5)(c)'s use of "surrender," the Debtor states that "surrender" in the context of the instant case is that the Debtor agreed to make the collateral available to the secured creditor. Specifically, the Debtor states that he would "cede his possessory rights in the collateral-within 30 days of the filing of the notice of intention to surrender possession of the collateral." The Debtor asserts that § 521(a)(2) does not suggests that the secured creditor is required to accept possession of the vehicle at the end of the 30-day period.

As to the plan language view of "surrender," the Debtor argues that case law, specifically *Arsenault v. JPMorgan Chase Bank, N.A. (In re Arsenault*), 456 B.R. 627 (Bankr. SD Ga. 2011), states that, under state law, a mortgage lender cannot be compelled to initiate foreclosure. The Debtor points out that, as in this case, the mortgage holder is accepting adequate protection payments and the Debtor is in compliance with their confirmed plan.

The Debtor requests that the Objection be continued to allow the Debtor to process a new loan modification in light of the above arguments.

OCTOBER 6, 2015 HEARING

At the October 6, 2015 hearing, the court continued the matter for the following reasons:

> A review of the confirmed plan states in the additional provisions:
>
> > "The claim including any arrearages of WELLS FARGO HOME MORTGAGE shall be satisfied by way of a loan modification. **Should the loan modification be declined**, **the claim** including any arrearages of WELLS FARGO HOME MORTGAGE **shall be satisfied by way of surrender of the property**. Entry of the order confirming the plan shall not modify the automatic stay."
>
> Dckt. 127 [emphasis added]. The term "surrender" is a term of art defined by the confirmed Chapter 13 Plan itself – the Class 3 treatment. This additional provision recognizes that

treatment, and adds the modification of that to the Class 3 treatment deleting the termination of the automatic stay.

Under the terms of the confirmed plan, the Debtor was making a plan payment of $2,200.00 per month, with $1,900.00 going to Wells Fargo Home Mortgage as the "monthly contract installment" even though the amount was less than the actual contractual payment amount.

The court's reading of the Additional Provision concerning the Creditor's lien is that when the loan modification is denied, the claim shall automatically become a Class 3 claim and Creditor limited to obtaining payment from foreclosing on its collateral. The required Class 3 surrender treatment does not provide for any further payments to be made by the Trustee to Creditor.

The additional provision appears to be one that pre-dates the "Ensminger Additional Provisions" which was worked out between creditors and debtors attorneys. Here, the plan language of the Additional Provision provides that upon the June 3, 2013 rejection of the loan modification, the Plan provides that the property is "surrendered" as a Class 3 claim. Thus, no further payments are provided to be paid to Wells Fargo Bank, N.A. since June 3, 2013.

However, neither Wells Fargo Bank, N.A. nor Debtor notified Trustee of the loan modification rejection and that no further payments were to be made to Wells Fargo Bank, N.A.

The Plan as confirmed, and allowed to be confirmed by Wells Fargo Bank, N.A., expressly provides that though it is a Class 3 claim, the automatic stay is not terminated. Wells Fargo Bank, N.A. has failed to seek relief from the automatic stay, instead electing to collect monthly payments from the Trustee which are not provided for in the confirmed Plan.

Considering the potential significant litigation which might ensure [sic] concerning the post-denial of the loan modification conduct of Debtor and Wells Fargo Bank, N.A., the court continues the hearing to 3:00 p.m. on November 17, 2015. Any supplemental papers shall be filed and served on or before November 3, 2015. Any replies or oppositions shall be filed and served on or before November 17, 2015.

The court continues the hearing to allow the parties to determine whether there is a proper, non-litigation resolution of this situation which may be agreed to by the Debtor, Trustee, and Wells Fargo Bank, N.A. Possibly, Debtor and Wells Fargo Bank, N.A. might work out a modification which can be approved as part of the existing plan or a modified plan. Wells Fargo Bank, N.A. and the Trustee may make arrangements to disgorge the monies received by Wells Fargo Bank, N.A. since June 3, 2013. Possibly Wells Fargo Bank, N.A. may present an argument that under the confirmed Plan that after

the rejection of the loan modification the plain language of the confirmed Plan does not provide for Class 3 surrender treatment (without the automatic modification of the automatic say), but some post-June 3, 2013 payments are provided for in the confirmed Plan. Debtor may show the court some good faith grounds for why they did not notify the Trustee of the modification direction to avoid having monies diverted to a creditor who was not entitled to receive them under the confirmed Plan.

Dckt. 163, 165.

CREDITOR'S OCTOBER 7, 2015 NOTICE OF MORTGAGE PAYMENT CHANGE

On October 7, 2015, Creditor filed a Notice of Mortgage Payment Change with several attached documents. The attached documents include a Certificate of Service and a redacted copy of the Trial Period Plan Agreement.

The Notice indicates that the change is due to "proposed modification agreement-trial payments." The current mortgage payment is listed as $3,583.14 and the new mortgage payment is listed as $3,443.53.

TRUSTEE'S NOVEMBER 3, 2015 RESPONSE

Trustee filed a supplemental response on November 3, 2015. Dckt. 166. Trustee asserts the following:

A. Assuming that Debtor's first payment of $99,515.93 due December 1, 2015, as stated in the Trial payment Plan Agreement Terms and Conditions, is the compilation of all disbursements made to date by the Trustee, Trustee calculates that only $98,846.90 will have been disbursed to this creditor by December 1, 2015. Thus, under the Trial Period Plan Agreement, Debtor will be delinquent $856.83.

B. Trustee recommends that, for Debtor's Trial Agreement to work, Debtor will need to provide additional funds of approximately $905.00, which consists of the $856.83, Trustee's Fee of 5.10%, and a slight cushion, by November 25, 2015 to give Trustee sufficient time to process and disburse the funds to Creditor.

C. Additionally, since Debtor's confirmed plan does not call for payments to the creditor above the $1,900.00 per month, the order on this motion will presumably provide for the Trustee to disburse any balance on hand to the creditor.

Dckt. 166, 167.

DEBTOR'S NOVEMBER 3, 2015 RESPONSE

Debtor filed a supplemental response on November 3, 2015. Dckt. 169. The response consists of the following:

A. The Trustee has received $1,900.00 per month for approximately (_55__) for a total of $104,500.00, which should be enough to cover the $99,515.93 payment, with payments of $3,443.53, due in January and

February.

B. "The Debtor has many concerns as to this latest Notice of Payment Change, as this "Notice" was filed the day after the Court continued the motion at the request of the parties, the loan modification has note [sic] been openly noticed, but instead what appears to be an attempt to identify where the $104,500.00 is being held, i.e. a suspense account?"

Dckt. 169.

The Debtor requests that the Motion be continued in light of the Creditor's subsequent Notice of Mortgage Payment Change filed.

NOVEMBER 17, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on January 12, 2015. Dckt. 173. In the court's civil minutes, the court stated the following:

> The court's concerns have been allayed in some respects and heightened in another. It appears that Wells Fargo Bank, N.A., realizing that it could well be required to pay back all of the monies paid through the Trustee shall the denial of the loan modification, appears to what to enter into a loan modification with Debtor. The Notice of Mortgage Payment Change filed on October 7, 2015, provides for payments on the loan to be $3,443.53 commencing in December 2015. Attached to the Notice is a copy of an October 2, 2015 proposed loan modification.
>
> While the court is heartened to see some productive loan modification steps, the court is concerned that nobody has come to the court to obtain authorization for the Debtor to enter into the modification. The attachment states only the first three months of a trial loan modification, not an actual modification. It could well be that after pocketing the years of payments not authorized under the plan under the "trial" modification, the Bank could just summarily deny the modification, seeking to foreclose on the property which it says has a value of $490,000.00. By keeping the unauthorized payments, the Bank would be improperly enhancing its recovery by almost $100,000.
>
> At the November 17, 2015 hearing, Wells Fargo Bank, N.A. represented that it was attempting to resolve this. Counsel for the Bank was unsure why the Bank was sending mortgage payment change notices.
>
> The court reaffirmed for the Bank that it would not approve any "modification" which was not a final, long term modification. The process would not be one in which the Bank created a false "modification" to keep the unauthorized payments and then decide that the Debtor did not "qualify" for a loan modification and foreclose on the house as well -

having pocketed almost $100,000.00 of heretofore unauthorized payments from the Trustee.

Dckt. 171.

TRUSTEE'S RESPONSE TO DEBTOR'S SECOND SUPPLEMENTAL REPLY

The Trustee filed a response on December 15, 2015. Dckt. 174. The Trustee reiterates that Creditor filed a Notice of Mortgage Payment Change on October 7, 2015 indicating Debtor's mortgage payment effective December 1, 2015 is $3,443.53. The Notice had the Trial Period Plan Agreement attached to it where the payments for the three month trial period were:

Payment	Due Date	Amount
1st Payment	December 1, 2015	$99,515.93
2nd Payment	January 1, 2016	$3,443.53
3rd Payment	February 1, 2016	$3,443.53

The Trustee originally believed the first payment of $99,515.93 due on December 1, 2015 was a compilation of all disbursements made to date by the Trustee. Through November 2015, the Trustee has disbursed a total of $98,846.90.

The Trustee states that Trustee's counsel received a call from Creditor's counsel clarifying that the first trial payment of $99,515.93 is a lump sum payment due and that the proposed loan modification had already considered all the Trustee payments disbursed.

The Trustee believes Debtor cannot afford the loan modification payments as set forth in the trial loan modification agreement.

The Trustee notes that the court had previously stated that the disbursements made by the Trustee to date had been unauthorized payments to the Creditor. The Trustee disagrees and states that the plan provides that the claim of the Creditor shall be satisfied "by way of a loan modification" without specifying which loan modification. Dckt. 127, pg. 7. The plan provides that if the loan modification is declined, that the claim shall be satisfied by way of surrender of the property, where the plan does not identify which loan modification shall satisfy the claim and a loan modification appeared pending until recently. Based on this, the Trustee believes the payments are authorized. However, the court does not concur with this analysis.

While the Trustee made the payments in good faith, Wells Fargo Bank, N.A. and Debtor hid from the Trustee that the loan modification had been denied and that Wells Fargo Bank, N.A. was no longer entitled to receive such payments. Though the Trustee may have acted in good faith, Wells Fargo Bank, N.A. cannot receive unauthorized payments by failing to disclose to the Trustee that it elected to deny the loan modification and that the sole plan treatment thereafter is the surrender of the collateral.

JANUARY 12, 2016 HEARING

At the hearing, xxxxx

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Notice of Mortgage Payment Change filed in this case by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that xxxx

21. 15-25446-E-13 DONALD MAH
RWH-2 Ronald Holland

MOTION BY RONALD W. HOLLAND TO WITHDRAW AS ATTORNEY
12-14-15 [55]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 13, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion of Debtor's Counsel to Withdraw as Counsel 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 and other parties in interest are entered.

The Motion of Debtor's Attorney to Withdraw as Counsel is granted.

Ronald Holland, counsel for Donald Mah ("Debtor"), filed the instant Motion of Debtor's Attorney to Withdraw as Counsel on December 14, 2015. Dckt. 55.

Mr. Holland states that subsequent to the filing of the instant case, Mr. Holland and the Debtor began to have differences in opinion on the progression of the case. Mr. Holland testifies that the Debtor requested that Mr. Holland withdraw as counsel so the Debtor could handle the matter pro se. Mr. Holland states that "[i]t has become apparent that [Mr. Holland] and the Debtor are no longer able to agree as to important issues on the prosecution of the case.

Mr. Holland states that the Debtor was previously a licensed attorney in California in California and is currently self-employed as a paralegal. Mr. Holland attests that the Debtor is knowledgeable about the case and aware of the actions needed to further prosecute the case.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. Local Bankr. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. Cal. L.R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client

of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might case to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 21 Cal. App. 4th 904 (Cal. App. 1st Dist. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 915.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. Cal. L.R. 180(e).

The termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdrawal from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. Cal. R. Prof'l. Conduct 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probably cause and for the purpose of harassing or maliciously injuring any person, (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act, and (3) has a mental or physical condition which makes Counsel's continued employment unreasonably difficult. Cal. R. Prof'l. Conduct 3-700(B).

Permissive Withdrawal is limited to when to situations where:

(1) Client:

> (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
>
> (b) seeks to pursue an illegal course of conduct, or
>
> (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or

(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or

(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

Cal. R. Prof'l. Conduct 3-700(C).

DISCUSSION

Mr. Holland provides that the address of the Debtor is 3122 Olympic Road, Fairfield, California.

Mr. Holland provides various reasons for his Motion to Withdraw as Attorney such as his disagreements with the Debtor over how to proceed forward with the case. Mr. Holland testifies that Debtor is fully aware of the status of the case and that there would be no reasonably foreseeable prejudice to the rights of the Debtor. In fact, Mr. Holland testifies that the Debtor requested for Mr. Holland to withdraw.

Neither the Trustee, Debtor or any other relevant party has filed an opposition to this Local Bankruptcy Rule 9014-1(f)(1) motion.

Furthermore, under the California Rules of Professional Conduct 3-700(C)(1)(d), Debtor's inability to agree with the Mr. Holland on how to proceed forward with the case, is hindering Mr. Holland's ability to carry out his employment and duties effectively. These are sufficient reasons for permissive withdrawal.

On December 22, 2015, the Debtor states in a declaration in response to the Chapter 13 Trustee's Motion to Dismiss that he has requested that Mr. Holland withdraw, and further that Mr. Mah (a former attorney) desires to represent himself in this bankruptcy case. Mr. Mah further states his affirmative agreement to the court authorizing Mr. Holland to withdraw as counsel for Debtor in this case. Declaration, Dckt. 64.

The Motion is granted and the court authorizes Ronald Holland, of the United Law Center, to withdraw as counsel for Debtor, Donald Mah, in this bankruptcy case. Mr. Mah shall proceed in this case in pro se.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Withdraw as Attorney filed by Debtor's Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Withdraw as Attorney is granted, Ronald W. Holland, of the United Law Center, is authorized to withdraw as counsel for Donald Mah, the Debtor, in this case, and Donald Mah is substituted, in pro se, in the place of Mr. Holland.

22. 15-22747-E-13 GARY/VICTORIA TEDFORD MOTION TO CONFIRM PLAN
PLC-4 Peter Cianchetta 11-4-15 [52]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. By the court's calculation, 69 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the 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 Motion to Confirm the Amended Plan is granted.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

23. 15-27047-E-13 PGM-1 — PRISCILLA/ANDREW CARRASCO — Peter Macaluso — CONTINUED MOTION TO CONFIRM PLAN — 10-5-15 [25]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. By the court's calculation, 69 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Amended Plan.

Priscilla and Andrew Carrasco ("Debtor") filed the instant Motion to Confirm the Amended Plan on October 5, 2015. Dckt. 25.

NOVEMBER 24, 2015 HEARING

The Motion to Confirm Plan was filed on October 5, 2015. The hearing on the Motion was set for November 17, 2015. (Forty-three days notice.) On October 13, 2015, Debtor filed an Amended Notice of Hearing, effectively continuing the matter to November 24, 2015. (Fifty days from filing of Motion.) On November 4, 2015, Debtor filed a second Amended Notice of Hearing, further continuing the matter to January 12, 2016. (Now, ninety-nine days after the filing of the Motion.)

In the court's final ruling, the court noted that:

> Nothing in the court's file indicates why Debtor is repeatedly filing amended notices of hearing – effectively usurping the court's control of its calendar. A party does not have the ability to unilaterally continue hearings.

Dckt. 45.

The court continued the hearing to 3:00 p.m. on January 12, 2016.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 17, 2015. Dckt. 48. The Trustee opposes confirmation on the following grounds:

1. Debtor Andrew Carrasco failed to appear at the first and continued Meeting of Creditors.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year.

3. The Debtor is $2,015.00 delinquent in plan payments. The Debtor has paid $140.00 into the plan to date.

4. The plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. Debtor's non-exempt assets total $2,010.00 and Debtor proposes to pay 3% to unsecured creditors. According to Debtor's Schedules A, B, and C, non-exempt property of $445.00 exists in Debtor's real property and $1,565.00 in Debtor's vehicles.

5. Debtor's declaration indicates that Debtor Andrew Carrasco has procured new employment. Debtor has not filed amended Schedules I and J showing the current income and expenses. The Trustee has not received any pay advices from the new employment to date.

DEBTOR'S REPLY

The Debtor filed a reply on January 4, 2016. Dckt. 51. The Debtor acknowledge the need for a new plan given the change in circumstances. The Debtor Priscilla Carrasco obtained a new job proceeding the filing of the case and recognize the need to amend the plan. The Debtor also states that Debtor Andrew Carrasco will appear at the January 7, 2016 continued Meeting of Creditors and that the Debtor's will be current.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Trustee next argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

The basis for the Trustee's objection is that the Debtor is $2,015.00 delinquent in plan payments. The Debtor admits to such delinquency. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that while Debtor is proposing a 3% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 3% dividend when there may be upwards of $2,010.00 in non-exempt equity.

Lastly, the Debtor admits to changes in employment. The Debtor's income and expenses on Schedules I and J are no longer accurate which makes it impossible to determine whether the proposed plan is feasible or viable. In fact, the Debtor states in their reply that there is a need to file a second amended plan to account for the employment changes.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

24. 14-23652-E-13 PHILIP/YVETTE HOLDEN
SDB-5 Scott deBie

MOTION TO APPROVE LOAN MODIFICATION
12-4-15 [87]

Tentative Ruling: The Motion to Approve Loan Modification 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2015. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 and other parties in interest are entered.

The Motion to Approve Loan Modification is continued to 3:00 p.m. on February 2, 2016. Debtor shall file and serve an amended motion and supporting pleadings on or before January 19, 2016.

The Motion to Approve Loan Modification filed by Philip and Yvette Holden ("Debtor") seeks court approval for Debtor to incur post-petition credit. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The modification will result in a total monthly payment of $1,609.33 per month which includes the escrow shortage. The new principal balance of the Note will be $344,587.60. The interest rate will be 4.1250%.

The Motion requests that the court authorize Debtor to enter into a loan

modification with "Wells Fargo Home Mortgage." In reviewing the Loan Modification documents (Exhibit A, Dckt. 90), a person known as "Wells Fargo Home Mortgage" does not appear to be a party to the modification. On the Modification Agreement (Deed of Trust), the "lender" is identified as "Wells Fargo Bank, N.A." Exhibit A, Dckt. 90 at 1. All of the terms of the Agreement are with "Wells Fargo Bank, N.A." The Agreement is executed for Wells Fargo Bank, N.A. by one of the Bank's Vice Presidents. *Id.* at 9. The Loan Modification document was prepared by Wells Fargo Bank, N.A. *Id.*

In reviewing the on-line data base provided by the California Secretary of State, the court notes that there formally was an entity known as "Wells Fargo Home Mortgage, Inc." http://kepler.sos.ca.gov/. This entity is identified as having been "merged out." The California Secretary of State also identifies two other "Wells Fargo Home Mortgage" entities: (1) Wells Fargo Home Mortgage of Hawaii, LLC (its status listed as cancelled) and Wells Fargo Home Mortgage, LLC (status listed as active, but "agent resigned 05/20/2014). *Id.*

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. Debtor testifies under penalty of perjury, "I am requesting permission from the Court to allow a loan modification of my first mortgage with **Wells Fargo Home Mortgage** for our residence." Dckt. 89, ¶ 2 [emphasis added].

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 17, 2015.

Wells Fargo Bank, N.A. filed proof of claim No. 13 in this case on August 12, 2014. The creditor is identified as Wells Fargo Bank, N.A. The Promissory Note attached to Proof of Claim No. 13 identifies the lender and payee under the notes as **Wells Fargo Bank, N.A.** Proof of Claim No. 13. The Deed of Trust securing the Note attached to Proof of Claim No. 13 identifies Wells Fargo Bank, N.A. as the Lender and the beneficiary under the Deed of Trust.

On November 1, 2014, a Notice of Mortgage Payment Change was filed, naming **Wells Fargo Bank, N.A.** as the creditor. The Notice is signed by a vice president of a "company" identified as "Wells Fargo Home Mortgage."

On May 11, 2015, a second Notice of Mortgage Payment Change was filed, naming **Wells Fargo Bank, N.A.** as the creditor. The Notice is signed by a vice president of a "company" identified as "Wells Fargo Home Mortgage."

On May 12, 2015, a third Notice of Mortgage Payment Change was filed, naming **Wells Fargo Bank, N.A.** as the creditor. The Notice is signed by a vice president of a "company" identified as "Wells Fargo Home Mortgage."

In light of more than five years stressing to the parties and attorneys who appear in this court the need to correctly identify the real parties in interest so that the court's order have legal force and effect, the court is at a loss to find any bona fide, good faith reason for listing "Wells Fargo Home Mortgage" as the person with whom the court should authorize Debtor to modify a loan. The court presumes that Debtor and Debtor's counsel carefully chose the name of the party with whom the loan modification was to be conducted. There is no evidence to support an order of the court authorizing a modification with Wells Fargo Home Mortgage. FN.1.

FN.1. It could well be that Debtor is attempting to mislead the court into entering an order which Debtor could later, in bad faith, disavow. Such conduct does not bode well for a debtor who must not only file, but propose and confirm a plan, and prosecute the bankruptcy case in good faith.

To minimize the potential for the Debtor to lose the loan modification due to the defective pleadings filed by counsel, the court continues to 3:00 p.m. on February 2, 2016. Debtor shall file and serve an amended motion and supporting pleadings on or before January 19, 2016.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Phillip and Yvette Holden having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on February 2, 2016. Debtor shall file and serve an amended motion and supporting pleadings on or before January 19, 2016.

25. 14-23652-E-13 SDB-6 PHILIP/YVETTE HOLDEN Scott deBie

MOTION TO EMPLOY JOSEPH M. LOVRETOVICH AS SPECIAL COUNSEL 12-10-15 [92]

Tentative Ruling: The Motion to Employ 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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 and other parties in interest are entered.

The Motion to Employ is continued to 3:00 p.m. on February 2, 2016.

Philip and Yevette Holden ("Debtor") seeks to employ special Counsel Joseph M. Lovretovich, pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Counsel to assist the Debtor in a wrongful termination action against Metropolitan Van and Storage.

The Debtor argues that Counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present wrongful termination claims.

Mr. Lovretovich testifies that he is representing Debtor in a wrongful termination against Metropolitan Van and Storage. Mr. Lovretovich testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the

U.S. Trustee, any party in interest, or their respective attorneys.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on December 15, 2015.

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

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Unfortunately, the Debtor has not provided the employment agreement. The Motion states that the Debtor wishes to retain Mr. Lovretovich on a contingency basis. However, the terms of the actual representation has not been disclosed. Without a copy of the retainment agreement, the court cannot determine whether the employment of special counsel is in the best interest of the Debtor, the estate, or creditors. The Debtor only provides a copy of Mr. Lovretovich's resume, which does not provide any of the terms of representation.

That Debtor, bankruptcy counsel, and the proposed special counsel have failed to disclose the actual contingent fee terms causes the court concern. In his declaration, proposed special counsel mentions that it is a 40% contingent fee and he is obligated to advance costs. The court does not know whether it is purported to be a 40% contingent fee prior to trial, after trial, or through all appeals, if any. Rather than denying the employment motion with prejudice, the court continues the hearing to allow Debtor and proposed special counsel to supplement the record.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Employ filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Employ is continued to 3:00 p.m. on February 2, 2016. Debtor and proposed special counsel shall filed and serve supplemental pleadings, including a copy of the proposed contingent fee agreement, which fully disclose the terms of the proposed employment.

26. 15-20352-E-13 GREGORY/CLARICE BRIDGES
PGM-1 Peter Macaluso
MOTION TO VALUE COLLATERAL OF LONG BEACH MORTGAGE COMPANY
11-19-15 [85]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 19, 2015. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 Motion to Value secured claim of Long Beach Mortgage Company ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Gregory and Clarice Bridges ("Debtor") to value the secured claim of Long Beach Mortgage Company ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4800 Westlake Parkway #2708, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $142,746.00 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).

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 that creditor's secured claim (rights and interest in collateral), that 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $315,273.50. Creditor's second deed of trust secures a claim with a balance of approximately $80,579.41. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Gregory and Clarice Bridges ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Long Beach Mortgage Company secured by a second in priority deed of trust recorded against the real property commonly known as 4800 Westlake Parkway #2708, Sacramento California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $142,746.00 and is encumbered by senior liens securing claims in the amount of $315,273.50, which exceed the value of the Property which is subject to Creditor's lien.

27. 15-27953-E-13 SHARON PHELPS
BF-5 James Brunello

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC
12-9-15 [25]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee on December 9, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to overrule the Objection.

Nationstar Mortgage LLC, as successor in interest to Everbank ("Creditor") opposes confirmation of the Plan on the basis that the Debtor's plan understates the pre-petition arrerage owed. The plan provides for repayment of only $31,406.48 but Debtor actually owes $34,635.78 in pre-petition arrears.

Sharon Phelps ("Debtor") file a response to the instant Objection on December 29, 2015. Dckt. 38. The Debtor states that she is drafting an amended Chapter 13 plan. The Debtor states that she will set the amended plan for confirmation.

Creditor's objection does not prevail merely because Debtor stated a slightly lower amount in the Plan. As expressly stated in the Plan, it is the amount stated in the Proof of Claim, or in an order of the court, that controls over the amount stated in the Plan. Chapter 13 Plan, ¶ 2.04, Dckt. 11.

The Chapter 13 Plan provides for monthly payments of $6,323. For the higher arrearage of $34,635.78, the monthly payment amortized over sixty months will be $577.26. This is $55 a month higher than listed in the Class 1 treatment for this claim provided in the plan.

Creditor does not assert an argument that the plan is not adequately funded to provide for this arrearage.

More significantly, Creditor offers no evidence of the higher arrearage amount. No proof of claim has been filed by Creditor. No declaration has been presented by Creditor attesting under penalty of perjury as to that alleged fact. Rather, the Objection to Confirmation is merely based on unsupported argument of counsel.

The Objection is overruled.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled. The Plan is not confirmed, the court having denied confirmation based on objections of other parties in interest and Debtor stating that she is filing an amended plan.

28. 15-27953-E-13 SHARON PHELPS **OBJECTION TO CONFIRMATION OF**
DPC-1 James Brunello **PLAN BY DAVID P. CUSICK**
12-10-15 [28]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, December 10, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor cannot make the payment under the plan or comply with the plan because the Debtor does not provide for the second deed of trust in the plan. The Debtor indicated at the Meeting of Creditors that she does not have a second deed of trust on the residence which means there may be substantial equity that should be for the benefit of creditors.

2. Debtor failed to disclose all transfers. Debtor admitted at the Meeting of Creditors that she sold a lot of land located at 4502 El Caminito Rd, Shingle Springs, California sometime in

the past year. The transfer of the property is not reported on Statement of Financial Affairs. Debtor admitted that the proceeds of the sale in the amount of $65,000.00 were used to pay down some bills and help out family members. The Debtor also failed to report any gifts to family over $600.00 in the last year on the Statement of Financial Affairs.

3. The Debtor may not have the ability to make payments. First, the Trustee notes that the first plan payment is to be $2,008.43, which has been paid, and the future payments are to be $6,323.00. The Debtor does not explain why the first payment is less. The Trustee further notes that the Debtor's budget relies on rent from a commercial property. However, a claim has been filed by the creditor and shows the entire loan on the commercial property matured August 20, 2014 and the Deed of Trust has an assignment of rents clause.

4. The Debtor failed to list a previous bankruptcy case no. 11-46095.

5. The Debtor failed to provide proof of her social security number to the Trustee.

Sharon Phelps ("Debtor") file a response to the instant Objection on December 29, 2015. Dckt. 38. The Debtor states that she is drafting an amended Chapter 13 plan. The Debtor states that she will set the amended plan for confirmation.

The Trustee's objections are well-taken. First, there is a discrepancy between what the Debtor testified to a the Meeting of Creditors and what is provided for on the Debtor's schedules. Namely, the Debtor lists a second deed of trust on her residence on Schedule D but does not provide for such in the plan. The Debtor stated at the Meeting of Creditors that she did not have a second deed of trust. While a debtor is not required to provide for a secured claim in the plan if he or she wishes to pay for the claim outside the plan, the instant issue is not of that type. Here, there is conflicting information as to the actual existence of the second deed of trust. Without this information being solidified, the Debtor's finances are not an accurate reflection and the court cannot determine whether the instant plan is feasible.

The Trustee's second objection mimics the first in the sense that, like the Trustee, the court cannot determine whether any plan filed by the Debtor is feasible when the Debtor has admittedly failed to list the sale of property on her Statement of Financial Affairs and failed to list gifts to family. There is potentially $65,000.00 that the Debtor does not disclose in her pleadings. Without this information, determining the feasibility of a plan is impossible.

As to the Trustee's third objection, the court is equally concerned over whether the Debtor can afford plan payments, namely because it appears that her main source of income may no longer be forthcoming. According to the Proof of Claim No. 1 filed by Spartan Mortgage Services, Inc., the lien on the commercial property has matured and the creditor may be entitled to the rents. The Debtor does not explain the status of the lien nor how the Debtor will continue receiving income from the property when the lien has matured.

The Trustee's fourth objection further highlights the concern of the court that the Debtor has not fully and completely disclosed all necessary information on her schedules and statements. The Debtor failed to disclose a prior bankruptcy. While this in and of itself is not an independent grounds to deny confirmation, the fact it is another piece of information omitted by the Debtor raises serious concerns over the veracity of the Debtor's filings and whether they are a truthful and accurate representations of the Debtor's finances.

The Debtor has not provided the Trustee with verification of her Social Security Numbers as required by 11 U.S.C. § 521(h)(2). This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

Debtor has filed three prior bankruptcy since 2010, in which she has been represented by the same counsel as she is in this case. There may well be in excess of $65,000 in preferential transfers or other transfers, which heretofore were undisclosed, which may have to be recovered as part of any Chapter 13 Plan. Serious questions arise as to how Debtor could have engaged in the undisclosed pre-petition conduct and in good faith neglected to disclose the sales and transfers of assets.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

29. 15-27953-E-13 SHARON PHELPS **OBJECTION TO CONFIRMATION OF**
FWK-1 James Brunello **PLAN BY KENNETH W. LIEWELLYN**
12-10-15 [32]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

Kenneth W. Liewellyn, the Creditor, opposes confirmation of the Plan on the basis that the Debtor is proposing to fund her plan using the Creditor's cash collateral without authorization. The Creditor holds the first deed of trust on the commercial property owned by the Debtor. The Debtor proposes to fund her plan through the collection of rents on this property. However, the Creditor's lien matured in August 2014 at which all unpaid principal, interest, and charges became due. The Creditor states that a notice of default was recorded approximately March 2, 2015. The Creditor argues that the Creditor only consents to the use of the cash collateral only to make payments on the promissory note, insurance on the property, real property taxes, and utilities.

Sharon Phelps (“Debtor”) file a response to the instant Objection on December 29, 2015. Dckt. 38. The Debtor states that she is drafting an amended Chapter 13 plan. The Debtor states that she will set the amended plan for confirmation.

The Creditor’s objections are well-taken. 11 U.S.C. § 363 is the operative section concerning the use of cash collateral. Pursuant to 11 U.S.C. § 363(c)(2), the Debtor may only use, sell, or lease cash collateral only if each entity which has an interest consents or the court authorizes such. There is no evidence of either in the instant case. Furthermore, the Debtor admits the need for a further amended plan.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

30. 12-39954-E-13 JOHN/MICHELLE PINEDA MOTION TO MODIFY PLAN
PLC-2 Peter Cianchetta 11-4-15 [48]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 4, 2015. By the court's calculation, 69 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

John and Michelle Pineda ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 4, 2015. Dckt. 48.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 16, 2015. Dckt. 71. The Trustee opposes confirmation on the following grounds:

1. The Trustee is uncertain of the proposed plan payment terms in Section 6 of the plan. The plan states that "Debtors have paid $85,705 through October 1, 2015, commencing November 1, 2015, plan payments shall be $2,700.00 per month for 26 months." This does not include payments made by the Debtor in October 2015. Additionally, November is the 36th month of the plan, thus only 25 payments remain to be paid. The Trustee states that this could be corrected in the order confirming.

2. The Trustee is uncertain of the Debtor's ability to pay. The Debtor did not submit any supplemental Schedules I and J. The most recent schedules were submitted on November 13, 2012. The schedules indicated that in 2012, the Debtors were living separately. However, in the declaration, the Debtor indicates that they are now living together.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objections are well-taken. While the Trustee's first objection could be corrected in the order confirming, the Trustee's second objection raises substantial concerns over whether the Debtor have provided an accurate reflection of their financial reality. The current Schedules I and J filed by the Debtor are over 3 years old. Within that time, it is certain that the Debtor's finances, whether it be income, expenses, living arrangement, etc., has changed. The Debtor admits such in the declaration indicating that the Debtors are now living together while the controlling Schedule I and J indicate that the Debtors are living separately. This is just a single instance where the financial information that the court and other parties of interest have to base the feasibility and viability of the plan on is inaccurate. Without updated financial information, the court cannot confirm the instant plan.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

31. 15-28456-E-13 GREGORY BRUTUS **OBJECTION TO CONFIRMATION OF**
DPC-1 Mark Wolff **PLAN BY DAVID P. CUSICK**
12-16-15 [28]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor failed to appear at the First Meeting of Creditors.

2. Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.

3. Debtor has failed to file all pre-petition tax returns required for the four years preceding the filing of the petition.

4. Debtor's plan fails to provide for the secured claim of the Internal Revenue Service. The debt is scheduled as a priority debt for $2,240.00. However, the Proof of Claim No. 1 filed by the Internal Revenue Service indicates a secured debt of $3,150.00, priority unsecured debt of $2,419.48, and general unsecured debt of $4,997.54.

5. Debtor is $150.00 delinquent in plan payments. The Debtor has paid $0.00 into the plan to date.

6. Debtor has not complied with 11 U.S.C. § 1325(a)(2) by failing to pay one or more of the installments.

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Next, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

Moreover, Debtor has failed to file the federal income tax return for the four tax years prior to the instant case. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(9).

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree

to, 11 U.S.C. § 1325(a)(5)(A),

(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or

(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

The amount and nature of a claim is controlled by the proof of claim or order of the court. Chapter 13 Plan ¶ 2.04. Here, the Internal Revenue Service has filed Proof of Claim No. 1 asserting a $3,150.00 secured claim, $2,419.48 priority claim, and $4,997.54 general unsecured claim. The Plan does not provide for the payment of a secured claim to the Internal Revenue Service.

The monthly plan payments are $150 for the first five months and then $350 for the remaining fifty-five months of the Plan. This totals $20,000.00 in payments to fund the Plan. Below is a rough calculation of the payments required under the plan and the additional amounts asserted by the Internal Revenue Service in Proof of Claim No.1.

Total Plan Payments	$20,000.00
Chapter 13 Trustee Fees (Est. 8%)	($1,600.00)
Debtor’s Attorneys Fees Paid Through the Plan	($5,000.00)
Class 2 Secured Claim Payment - Univ. Accpt.	($10,200.00)
Franchise Tax Board Priority Claim	($850.00)
Internal Revenue Service Priority Claim	($2,419.48)
Internal Revenue Service Secured Claim (Est. 3% Interest)	($3,396.08)
Excess/(Shortage) of Plan Funding	($3,465.56)

It appears that the Plan is approximately 20% under-funded.

The basis for the Trustee’s fifth objection is that the Debtor is $150.00 delinquent in plan payments. The Debtor’s delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee’s last objection, it appears that on December 16, 2015, the Debtor made the required installment payment. However, even with the objection being cured, the Trustee’s remaining objections are all independent grounds to deny confirmation.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

32. 11-29457-E-13 ABEL/NORMA CHAVEZ — MOTION TO RECONSIDER
JME-1 Steele Lanphier — 11-21-15 [39]
DEBTOR DISMISSED:
11/09/2015
JOINT DEBTOR DISMISSED:
11/09/2015

Tentative Ruling: The Motion for Reconsideration of Order 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 20, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion for Reconsideration of Order 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 and other parties in interest are entered.

The Motion for Reconsideration of Order is denied.

Abel and Norma Chavez ("Debtor") filed the instant Motion for Reconsideration of Order on November 21, 2015. Dckt. 40. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds upon which the requested relief is based:

A. "Debtor has been hindered in paying for the Chapter 13 Plan as cobdebtor, her husband from whom she is separated, did not comply in paying his part of the Chapter 13 Plan."

B. "Codebtor has given money to debtor to pay for the Plan, and now she wishes to pay."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on December 18, 2015. Dckt. 42. The Trustee states that he filed a Motion to Dismiss for a $2,100.00 delinquency. Dckt. 30. On November 9, 2015, the court granted the Trustee's Motion and dismissed the case. No opposition was filed by the Debtor.

The Debtor remains delinquent at this time in the amount of $800.00.

The Trustee further states that the Debtor has not presented any legal theory to justify setting aside the order dismissing. The Trustee states that where the case is a joint case and Debtor's attorney represents both debtors, the reason to set aside the order dismissing is not clear.

DISCUSSION

Failure to Provide Notice of Hearing

First, the Debtor has failed to provide a Notice of Hearing. Local Bankruptcy Rule 9014-1(d)(3) requires:

> Every motion shall be accompanied by a separate notice of hearing stating the Docket Control Number, the date and time of the hearing, the location of the courthouse, the name of the judge hearing the motion, and the courtroom in which the hearing will be held.

The Debtor failed to provide such Notice. This in and of itself is an independent ground to deny the motion.

Failure to Provide Evidence

Additionally, the Debtor provides no evidence in support of the Motion. The Debtor does not provide any exhibits nor any declarations to support the relief requested. Rather, as discussed infra, the Debtor states the reason for the delinquency in the Motion without providing any authenticated and admissible evidence. Local Bankruptcy Rule 9014-1(d)(7) requires that "[e]very motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested." Local Bankr. R. 9014-1(d)(7).

Here the Debtor has only provided a two-page Motion that does not provide any evidence as to the factual allegations of the relief sought nor explains why the Debtor did not respond to the initial Motion to Dismiss.

Failure to Comply with Fed. R. Bankr. P. 9013

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. The case was commenced by the filing of a voluntary petition on behalf of the Debtors on April 15, 2011 and David P. Cusick was

duly appointed as Trustee.

B. Upon the filing of a Motion/Application to Dismiss Case, Docket Control Number: DPC-3, filed on behalf of Norma and Abel Chavez, this Court conducted a hearing on November 9, 2015.

C. This Court thereafter entered an Order that GRANTED the Motion/Application to Dismiss Case.

D. The Debtors now move the Court to Reconsider this decision for the following reason(s):

1. Debtor has been hindered in paying for the Chapter 13 Plan as cobdebtor [sic], her husband from whom she is separated, did not comply in paying his part of the Chapter 13 Plan. Codebtor has given money to debtor to pay for the Plan, and now she wishes to pay.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the reason for the delinquency in plan payments was due to a delay in the co-Debtor paying his share. However, nowhere in the Motion does the Debtor state why they did not file a response to the Motion nor why they did not appear at the hearing. Furthermore, the Motion does not cite to the specific grounds for vacating an order nor is there a declaration nor points and authorities attached. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-

with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points

and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Even looking at the merits of the Motion, even in light of the Debtor's failure to state with particularity the relief sought, to provide any evidence, and to provide a Notice of Hearing, the Debtor has not sufficiently shown why, under Fed. R. Civ. P. 60, why the order should be vacated. The court is assuming that the Debtor is moving under Fed. R. Civ. P. 60, as incorporated by Fed. R. Bankr. P. 9024. There is a minimum of six individual grounds under Fed. R. Civ. P. 60 that the Debtor could have attempted to seek relief under. However, the Debtor does not cite to a single subsection of Rule 60(b) and the court declines the invitation to "fill in the blank" for the Debtor.

For the above stated reasons, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Reconsideration filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

33. 15-29657-E-13 KIRSTINE BOOTH
MOH-1 Michael O. Hays

MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK
12-29-15 [10]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Creditor on December 29, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing ----------.

The Motion to Value secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Kirstine Booth ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 54 East Yolo Street, Orland, California ("Property"). Debtor seeks to value the Property at a fair market value of $65,000.00 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).

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 that creditor's secured claim (rights and interest in collateral), that 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $72,322.15. Creditor's second deed of trust secures a claim with a balance of approximately $90,110.19. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kirstine Booth ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 54 East Yolo Street, Orland, California, is determined to be a secured claim in the amount of $0.00, and the

balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $65,000.00 and is encumbered by senior liens securing claims in the amount of $72,322.15, which exceed the value of the Property which is subject to Creditor's lien.

34. 15-24763-E-13 TITO AMARO **MOTION TO CONFIRM PLAN**
SMJ-1 Scott Johnson **12-1-15 [46]**

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the 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 Motion to Confirm the Amended Plan is granted.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 1, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 10-47165-E-13 SDB-2 WILLIAM/JANET RHOADES Scott de Bie MOTION FOR WAIVER OF SECTION 1328 REQUIREMENTS 12-11-15 [42]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

The Debtor having filed a Reply to Trustee's Opposition for the pending Motion for Waiver of 1328 Requirements, the court construing the Reply as a *de facto* request for withdrawal based on the request to deny without prejudice, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion for Waiver of 1328 Requirements**.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion for Waiver of 1328 Requirements having been filed by the Debtor, the Chapter 13 Trustee having filed an opposition to the Motion, the Debtor request that the court deny without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion for Waiver of 1328 Requirements is dismissed without prejudice.

36. 15-24065-E-13 MAURICE CARR **MOTION TO CONFIRM PLAN**
Pro Se **12-2-15 [76]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and parties requesting special notice on October 13, 2015. By the court's calculation, 91 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Amended Plan.

Maurice Carr ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 2, 2015. Dckt. 76.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 17, 2015. Dckt. 84. The Trustee objects on the following grounds:

1. The Debtor is $89.00 delinquent in plan payments.

2. The Debtor has failed to provide the Trustee with the most recent pay advices.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee’s objections are well-taken.

The basis for the Trustee’s objection is that the Debtor is $89.00 delinquent in plan payments. The Debtor’s delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period. The Debtor has failed to provide all necessary pay stubs. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

37. 15-29466-E-13 TATYANA DENNY
MS-1 Mark Shmorgan

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
12-7-15 [8]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim 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 Motion to Value secured claim of Internal Revenue Service ("Creditor") is granted and the secured claim is determined to have a value of $2,700.49.

The Motion filed by De ("Debtor") to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of:

1. 2004 Ford Taurus SES Sedan 4D - $2,250.00
2. Cell Phone - $100.00
3. Wearing Apparel - $100.00
4. Jewelry - $100.00
5. Bank of America eBanking Checking Account No. XXXX1608 - $82.49
6. Modernwoodman Term Life Insurance - $0.00

("Assets"). The Debtor seeks to value the Vehicle at a replacement value of $2,700.49 as of the petition filing date. As the owner, the 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).

The Creditor filed Proof of Claim No. 1 on December 17, 2015. The Proof of Claim No. 1 states that there is (1) a secured claim in the amount of $2,700.49; (2) unsecured priority claims in the amount of $975.51; and (3) general unsecured claims in the amount of $53,162.73.

The Creditor claims the same secured amount as the amount the Debtor is seeking to value the Creditor's secured interest.

The court grants the Motion, determining the secured claim of the Internal Revenue Service to have a value of $2,700.49. The court does not determine the character of the unsecured claim in the context of a motion to value secured claim pursuant to 11 U.S.C. § 506(a).

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Tatyana Denny ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Internal Revenue Service ("Creditor") secured by the following personal property
>
> 1. 2004 Ford Taurus SES Sedan 4D
>
> 2. Cell Phone
>
> 3. Wearing Apparel
>
> 4. Jewelry
>
> 5. Bank of America eBanking Checking Account No. XXXX1608
>
> 6. Modernwoodman Term Life Insurance
>
> ("Assets"), is determined to be a secured claim in the amount of $2,700.49, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Assets is $2,700.49 and is encumbered by liens securing claims which exceed the value of the asset.

38. 09-26667-E-13 JOSE/ROBIN GONZALEZ
DPC-1 Jeremy Heebner

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7
5-12-15 [91]

No Tentative Ruling: The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 12, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is xxxx

This Motion to Dismiss the Chapter 13 bankruptcy case of Jose and Robin Gonzalez ("Debtor") has been filed by David Cusick, the Chapter 13 Trustee.

The Trustee states that the plan was completed on May 9, 2014 and the order approving the Trustee's Final Report was filed on July 9, 2014. The discharge of the Debtor was filed on July 29, 2014. The sexual harassment complaint was filed on July 9, 2013. The order reopening the case was filed on August 28, 2014.

The Debtor's Schedules B and C were amended on August 28, 2014 to include the contingent and unliquidated claims regarding the sexual harassment and workers compensation with the values listed as "unknown" and exempting

$3,000.00 for the harassment case and $2,680.00 for the workers compensation claim.

The Trustee states that he is unable to find information in the Yuba County Court regarding the workers compensation case. Case no. YBCT-550301.

As to the sexual harassment case, the Trustee discovered that the trial is set to begin on August 24, 2015. District Court for the Eastern District of California, Case No. 2:13-CV-01368. However, the Trustee notes that it has been requested by the parties for the trial to be continued to September 28, 2015 and for discovery to be continued as well. The Trustee states that, based on the case, it is not apparent what, if any, award the Debtor would receive.

The Trustee argues that since the Final Report has been approved and the discharge of the Debtor entered, the Trustee does not know of what purpose to be served to administer the underlying reopened Chapter 13 case. The Trustee argues that the case should be converted to a Chapter 7, where a Chapter 7 Trustee would be better able to step into the Debtor's position and realized an award which could then be distributed to creditors.

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Motion on May 18, 2015. Dckt. 96. The Debtor states that they reopened the Chapter 13 case in order to list additional assets, namely the two pending state and federal cases. The Debtor argues that the Trustee has offered no authority that a Chapter 7 liquidation would be proper merely because the Chapter 7 Trustee may be better at distributing any funds that may be received.

The Debtor states that there is a distinct possibility that Debtor Robin Gonzalez may not win anything in the lawsuits, leaving nothing to be done. If Debtor Robin Gonzalez does prevail, she may have to pay additional money to the Chapter 13 Trustee. The Debtor states that instead of converting, closing the case until such assets become available, if any, would be a possible solution.

The Debtor filed a supplemental response on May 26, 2015. Dckt. 98. The Debtor states that after speaking with the trial attorney, the Debtor does not wish for their case to be closed, but instead want the case to remain open as a Chapter 13. The Debtor also notes that the Trustee was unable to find any information concerning the workers compensation case because it was filed in Yolo County and not Yuba County.

RULING

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

DISCUSSION

Debtor filed this bankruptcy case on April 9, 2009. In 2013, while this Chapter 13 case was pending, Debtor commenced an action asserting claims for sexual harassment. Debtor never disclosed the existence of this claim, or a worker's compensation claim during the pendency of this case. Debtor's confirmed Chapter 13 Plan required monthly plan payments of only $538.50. Plan, Dckt. 21. Debtors provided for at least a 51% dividend to creditors holding general unsecured claims.

In reviewing the District Court file, this court notes that the reopening of this case and the disclosure of these claims occurred only after the Defendant in the District Court Action asserted that Debtor was prohibited by judicial estoppel from prosecuting the claims because Debtor failed to Schedule them in this bankruptcy case. E.D. Cal. 13-01368, Dckt. 37; December 29, 2014 Renewed Motion for Summary Judgment based on Judicial Estoppel. The Motion for Summary Judgment based on Judicial Estoppel was originally filed on August 13, 2014. *Id.*, Dckt. 19.

In the District Court Action Debtor filed a response to the August 13, 2014 Motion for Summary Judgment asserting that amended schedules had been filed in this bankruptcy case disclosing this asset. *Id.*, Dckt. 21; filed by Johnny L. Griffin III, attorney for Debtor. On August 28, 2014, Debtor filed the Amended Schedule B disclosing this asset. Dckt. 89. This Amended Schedule B was served on the Chapter 13 Trustee and the U.S. Trustee. Cert. of Service, Dckt. 90. That is after the plan had been completed and the Debtor's discharge entered.

The Complaint in the District Court Action was filed on July 9, 2013. The conduct upon which the claims are based occurred prior to and during this bankruptcy case. Such claims are property of the bankruptcy estate, to be prosecuted by the representative of this bankruptcy estate. In a Chapter 13 case that is the Chapter 13 Debtor.

The court having reopened this case, the chapter 13 debtors, Jose Hernandez Gonzalez and Robin Michelle Gonzalez, are the proper parties to assert the rights in the District Court Action.

However, since the assets were never disclosed, they have remained in the bankruptcy estate notwithstanding confirmation of the plan, completion of the plan, and Debtor obtaining a discharge.

> "This Panel has previously stated, "[a]bandonment pursuant to Section 554 requires that the property to be abandoned is properly scheduled under Section 521(l)." *In re Pace*, 146 B.R. at 564. Here, if the Alleged Partnership exists, it was not scheduled. Accordingly, it has not been fully administered and was not abandoned back to Clarks."

Clark v. Strand (In re Clark), 2008 Bankr. LEXIS 4738 at 11 (B.A.P. 9th Cir. Apr. 3, 2008) FN.1. The confirmed Chapter 13 Plan expressly provides that only scheduled property was revested in the Debtors upon confirmation of the Plan. 09-26667; Modified Chapter 13 Plan Paragraph 6.01.

In the earlier decision in *Pace*, the Bankruptcy Appellate Panel stated:

> "Abandonment pursuant to § 554(c) requires that the property to be abandoned is properly scheduled under § 521(l). *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir.1991) (unless formally scheduled, property is not abandoned at the close of the estate, even if the trustee knew of the existence of the property when the case was closed); *In re Harris*, 32 B.R. 125, 127 (Bankr. S.D. Fla.1983) (property not scheduled was not deemed abandoned and remained property of the estate); *In re Medley*, 29 B.R. 84, 86-87 (Bankr. M.D. Tenn. 1983) (an unscheduled asset was not deemed abandoned and trustee could reopen case to administer the asset to creditors)."

In re Pace, 146 B.R. 562, 564 (B.A.P. 9th Cir. 1992).

Further, not having been disclosed and not having been abandoned back to the Debtors, this property of the bankruptcy estate has been protected from "harm" by the automatic stay provisions of 11 U.S.C. § 362(a).

> "Undisclosed property of the estate does not revert to a debtor upon discharge in a Chapter 7. *Pace v. Battley (In re Pace)*, 146 B.R. 562, 564 (9th Cir.BAP1992). As such, under Section 362(c)(1) a stay against property of the estate remains in place until the property is no longer property of the estate.11 Thus, stay relief was required to pursue the matter in state court."

Clark v. Strand, 2008 Bankr. LEXIS 4738 at *9.

JUNE 24, 2015 HEARING

At the hearing, the court found that conversion of the case to one under Chapter 7, and requiring a new party in interest to be substituted into the District Court Action (a chapter 7 trustee) and disrupt that Action which is ready for trial was not in the best interest of the estate.

The court ordered the following:

IT IS ORDERED that the Motion to Dismiss is continued to

3:00 p.m. on January 12, 2016.

IT IS FURTHER ORDERED that Jose Hernandez Gonzalez and Robin Michelle Gonzalez, the Chapter 13 Debtors in this case, shall continue in the prosecution of the claims in the District Court Action pending before the United States District Court for the Eastern District of California, case no. 13-cv-01368, and the claims described as

> Sexual Harassment Claim, Case Number: 2:13-CV-01368-KJM-AC, and
>
> Workers' Compensation Claim, Case Number: YCBT-550301

on Amended Schedule B filed in this bankruptcy case.

IT IS FURTHER ORDERED that all monies recovered for or relating to the above described claims shall be paid to the Clerk of the Court, for the United States Bankruptcy Court for the Eastern District of California pending further order of this court how such monies are to be disbursed.

IT IS FURTHER ORDERED that Johnny L. Griffin III, any other attorneys or professionals who seek to be compensated for legal services provided or reimbursed for expenses relating to such legal services provide to Jose Hernandez Gonzalez and Robin Michelle Gonzalez, as Debtors, in prosecuting the above describes claims which are property of the bankruptcy estate shall have the Debtors obtain authorization pursuant to 11 U.S.C. § 327 and obtain the allowance of any such professional fees and expenses pursuant to 11 U.S.C. §§ 330 and 332.

Dckt. 102.

JANUARY 12, 2016 HEARING

To date, no supplemental papers have been filed in connection with the instant Motion.

At the hearing, xxxxx

39. 15-23668-E-13 JUAN/GENEVA GOMEZ — MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella — 11-15-15 [69]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 15, 2015. By the court's calculation, 58 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the 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 Motion to Confirm the Amended Plan is granted.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 15, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

40. 11-20572-E-13 JOHANNES GIORGISE
WW-8 Mark Wolff
MOTION FOR ORDER AUTHORIZING TRUSTEE TO RELEASE FUNDS
12-18-15 [284]

Tentative Ruling: The Motion for Order Authorizing Trustee to Release Funds 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 25 days' notice was provided. 28 days' notice is required.

The Motion for Order Authorizing Trustee to Release Funds 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 and other parties in interest are entered.

The Motion for Order Authorizing Trustee to Release Funds is denied without prejudice.

Johannes Girgise ("Debtor") filed the instant Motion for Order Authorizing Trustee to Release Funds on December 18, 2015. Dckt. 284.

The Debtor is seeking the court to authorize the remaining sale proceeds from sale of Debtor's residence and authorize Debtor to cure the default on the mortgage on the rental property the Debtor is seeking to now

make his primary residence.

The court on October 7, 2015 authorized that $13,300.00 of the sale proceeds released to Debtor to pay for limited moving expenses. Dckt. 283.

David Cusick, the Chapter 13 Trustee, filed a reply to the instant Motion on December 29, 2015. Dckt. 296. The Trustee states that the Trustee filed a Motion to Modify the Plan which is set for hearing at 3:00 p.m. on February 2, 2016. The Trustee states that if the instant Motion is granted, it will effectively deny the Trustee's Motion to confirm a modified plan. The Trustee requests that the Motion be continued to be heard in conjunction with the Motion to Modify.

The Trustee argues that the proceeds the Debtor seeks to obtain are non-exempt proceeds from the sale of the real property. Further, there is no confirmed plan providing for payment of these non-exempt assets to the creditor as sought by Debtor.

The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) are:

a. On November 21, 2012, Debtor filed a second modified plan changing the classification of the claims secured by Debtor's residence and rental properties from Class 1 to Class 2 based on there being loan modifications.

b. Though not stated in the Motion, the Second Modified Plan was confirmed by order of the court filed on February 7, 2012. Dckt. 210.

c. Since "filing" the Second Modified Plan, Debtor was served with dissolution pleadings and has been ordered to pay $2,700 a month in child and spousal support.

d. IN August 2015 Debtor filed a motion for authorization to sell his residence because he was no longer able to make the monthly payments.

e. The court granted that motion and authorized the Debtor to sell the residence, but ordered that the sales proceeds be held by the Chapter 13 Trustee.

f. As noted by the court in the Civil Minutes for the hearing on the motion for authorization to sell the residence, Debtor has not claim an exemption in the residence. Dckt. 273.

g. In October 2015, Debtor requested that the court authorize the Trustee to disburse a portion of the net sales proceeds to Debtor to pay his personal housing expenses through the remaining term of the Plan (the sixtieth month of the Plan being February 2016).

h. The court authorized the Trustee to disburse $13,300.00 to Debtor and ordered the Trustee to apply $3,500.00 of the proceeds to the Chapter 13 Plan.

i. Debtor has $2,500.00 of the $13,300.00 disbursed by the Chapter 13 Trustee remaining.

j. Debtor has evicted the tenant from the rental property and now desires to make it the Debtor's residence.

k. Debtor asserts that he has spent over $6,000 making repairs to the rental property, as well as other work, such as painting, which he has done himself.

l. The court's order authorizing the disbursement of the $13,300 by the Trustee restricted to use of those monies for purposes which do not include any of the repairs to the rental property.

m. Debtor has fallen behind on the payments on the Class 4 debt secured by the rental property. The Motion asserts that this occurred because the tenant in the property did not pay rent for six months.

n. On September 29, 2015 a notice of default was filed by the creditor holding the claim secured by the rental property.

o. Debtor asserts that the remaining monies, in an unstated amount, are necessary for his "financial rehabilitation."

p. Debtor states that his net income is $5,545 and that his expenses are essentially unchanged since filing Supplemental Schedule J on October 6, 2015, with the exception that the support payments have increased to $2,700 (from the $2,200 listed on Supplemental Schedule J).

Motion, Dckt. 284.

On Supplemental Schedule I Debtor states that his gross income is $8,535.84. Dckt. 281. Deductions from this gross income include: (1) $303.80 voluntary contribution for retirement; and (2) $323.87 for repayment of a 401K loan (effectively paying Debtor himself the money). After withholding, the voluntary retirement contribution, and repaying his 401K loan, Debtor states that the has $5,545.39 in monthly take-home income.

On Supplemental J Debtor lists $4,240 (which includes $100 for electricity/gas; $50 for water, sewer, garbage; $150 for phone/cell phone, and $100 for internet, cable) in monthly expenses (after excluding the rental property expenses). *Id.*

The information from Schedules I and J indicate that Debtor has at least $1,305.39 in projected disposable income.

The confirmed Second Modified Plan now in effect in this case requires monthly payments of $585.91, based on how Debtor computed his projected disposable income in 2013. Exhibits 5 and 6, Dckt. 177.

The Trustee has now proposed a Third Modified Plan. Dckt. 290. In addition to the $585.91 a month in plan payments, the proposed Third Modified

Plan provides for a lump sum payment of $67,894.50, the remaining sales proceeds held by the Trustee from the sale of the residence.

The Trustee reports that under the Plan, the Trustee disbursed plan payments totaling $47,983.63 as payments to the creditor having the claim secured by the property which was sold, from which the Trustee is holding $67,894.50 in remaining sales proceeds.

The proposed Third Modified Plan filed by the Trustee provides for at least a 12% dividend to Class 7 creditors holding general unsecured claims. Under the Debtor's confirmed Second Modified Plan Class 7 creditors holding general unsecured claims were promised only a 0.00% dividend.

The Debtor did not provide sufficient notice of the instant Motion. The Debtor's proof of service states that the Motion and accompanying papers were served on December 18, 2015. That is 25 days notice. The Debtor's Notice of Hearing states that written opposition is required and that the Motion is being made pursuant to Local Bankr. R. 9014-1(f)(1). A motion made under Local Bankr. R. 9014-1(f)(1) requires a minimum of 28 days notice. Here, the Debtor did not provide the sufficient notice.

Further, grounds have not been shown as to why the court would order the Trustee to turn over $67,894.50 in estate monies in which no exemption has been claimed by Debtor. While Debtor would like to get the money, it is not consistent with the Bankruptcy Code.

It appears to the court that the current situation may not be an all or nothing proposition for the parties. The Trustee reports that "creditors" made $47,983.63 in payments to the creditor holding the claim secured by the residence. Those payments preserved the residence which resulted in the Trustee receiving $84,694.50 in sales proceeds (of which $13,300 has already been disbursed to the Debtor and $3,500 paid into the plan).

The Trustee and Debtor can address the issues of what moneys could, or should, properly be disbursed to Debtor and what moneys should be paid into the plan from the non-exempt sales proceeds.

Therefore, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Order Authorizing Trustee to Release Funds filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

41. 15-27273-E-13 MANUEL/LORI GARCIA
Peter Macaluso

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC
12-10-15 [34]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 6, 2015. By the court's calculation, 67 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to overrule the Objection.

Ocwen Loan Servicing, LLC as servicer for HSBC Bank USA, National Association, as Trustee for the Benefit of People's Financial Realty Mortgage Securities Trust, Series 2006-1, Mortgage Pass-Through Certificates, Series 2006-1 ("Creditor") opposes confirmation of the Plan on the basis that the plan does not provide the full pre-petition arrerage of the Creditor's claim. The plan only provides for $18,500.00 when the Creditor asserts that the pre-petition arrerage is $19,994.30.

DEBTOR'S REPLY

The Debtor filed a reply on December 28, 2015. Dckt. 36. The Debtor states that the plan cash flows with $25.00 increase to monthly dividend. The Debtor asserts that the difference per month for the Creditor's claim is $25.00 from what is provided for in the plan. The Debtor argues that since the Debtor's counsel uses a 10% Trustee fee, rather than the 6.5% presently being used, the payment provided by the Debtor is sufficient to cash flow the increase in the monthly dividend to the Creditor.

DISCUSSION

The Creditor's objection is misdirected. Contrary to Creditor's statement, the amount of an arrearage or claim stated in the Chapter 13 Plan does not control. It is the proof of claim or order of the court determining the amount of the claim which controls. Chapter 13 Plan ¶ 2.04, Dckt. 5.

Creditor did not file a declaration to provide evidence of the amount of the asserted arrearage. However, Creditor has filed Proof of Claim No. 3 in which an arrearage of $22,196.72 is stated. Based on Proof of Claim No. 3, that is the amount for which evidence has been presented to the court. However, in the opposition a lower amount is "admitted" by Creditor, $19,994.30.

The proposed Chapter 13 Plan envisioned 60 monthly arrearage payments of $350 (which actually total $21,000). This is in excess of the $19,994.30, and almost enough even if it were the higher amount stated in the Proof of Claim.

Therefore, the Objection is overruled. The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a).

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on September 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

42. 12-25574-E-13 JASON/MARGARET KHAN
PGM-1 Peter Macaluso

CONTINUED MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR
10-29-15 [52]

Tentative Ruling: The Motion to Substitute 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 29, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 and other parties in interest are entered.

The Motion to Substitute is denied without prejudice.

Joint Debtor, Jason Khan, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Margaret Khan. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on March 22, 2012. On August 31, 2012, the Debtor's Chapter 13 Plan was confirmed. Dckt. 36. On September 1, 2015, Debtor Margaret Khan passed away. The Joint Debtor asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on October 29, 2015. Dckt. 52. Joint Debtor is the husband of the deceased

party and is the successor's heir and lawful representative.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on November 18, 2015. Dckt. 58. The Trustee objects on the following grounds:

1. The Debtor does not city the legal authority of continued administration of the case.

2. It is not clear if the deceased Debtor had any life insurance as no policies were listed in the most recent Schedules B and C. a life insurance expense in the amount of $28.46 was listed on Schedule J. Dckt. 22.

3. The Motion does not address any survivor benefits. A pension through Operating Engineers retirement fund with a value of $9,207.95 and a 401(k) through Teichert with a value of $8,626.45 were listed on Schedule B. Both Assets were listed on Schedule C and exempted in those amounts. It is not clear which Debtor these assets belonged to.

4. The Surviving Debtor has offered no explanation as to how he will be able to pay th expenses and fund the plan after losing the deceased Debtor's income. The Surviving Debtor also failed to file supplemental Schedules I and J.

DEBTOR'S REPLY

The Surviving Debtor filed a reply on November 23, 2015. Dckt. 61. The surviving Debtor responds as follows:

1. Further administration of the case is possible because the Surviving Debtor is the deceased Debtor's husband and successor in interest. The Surviving Debtor states that he intends to complete the plan. Dckt. 55. Additionally, the Surviving Debtor asserts that it is in the best interest of the parties to continue the case because there is a confirmed plan.

2. The Surviving Debtor did not receive anything more than a social security death benefit of $255.00 which was used for the funeral of the deceased Debtor.

3. The pension belongs to the Surviving Debtor and Operating Engineers.

4. The Debtor's income was based on the surviving Debtor's employment and a contribution from his deceased wife of approximately $1,600.00 per month, less $200.00 for taxes for 1099 work. The Debtor states that while the income from the deceased Debtor has been eliminated, the Surviving Debtor does have fewer expenses as his daughters are now 19 and 26 years of age and no longer require food and other expenses originally

contemplated in the 2012 budget. The Debtor acknowledges the need to amend Schedules I and J to ensure the ongoing feasibility of the plan.

DECEMBER 8, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on January 12, 2015. Dckt. 65. The court ordered that the Debtor shall file and serve on or before December 22, 2015 supplemental Schedules I and J. Any opposition or reply was ordered to be filed and served on or before January 5, 2016. The court contemplated that this would allow the Surviving Debtor to address all of the issues in one omnibus motion, rather than granting only partial relief and requiring one or more additional motions.

TRUSTEE'S RESPONSE

The Trustee filed a response to the instant Motion on January 5, 2016. Dckt. 66. The Trustee states that the Debtor failed to file supplemental Schedules by the December 22, 2015 deadline. Additionally, the Trustee has not been advised if a life insurance exists.

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.
>
> 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.**
>
> 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 due to the death of a debtor, 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.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, the court shares the concerns of the Trustee over the continued

feasibility and administration of the case. The Debtor admits in the reply that there is a need for supplemental Schedules I and J. This need is only further emphasized by the facts that the Debtor's last Schedule I and J filed is three years old, that the Debtor Margaret Khan passed away, and that the Debtor's children are no longer requiring food and other expenses.

It is impossible for the court to make a determination that continued administration of the case is in the best interest of the estate and parties. The Debtor admits that the court does not have sufficient evidence to ensure the ongoing feasibility of the plan. See Dckt. 61.

The court offered the Surviving Debtor the opportunity to file supplemental papers to address the concerns of the court and the Trustee. The Debtor failed to take advantage of the opportunity.

As such, the court still does not have sufficient information. Therefore, the Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

43. 15-28475-E-13 CARLA GALBRAITH
DPC-1 Kristy Hernandez

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-16-15 [15]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor is $440.00 delinquent in plan payments. The Debtor has paid $0.00 into the plan to date.

2. The Debtor's plan relies on a Motion to Value Collateral of Capital One Auto Finance.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing

the secured claim of Capital One Auto Finance. The Debtor has filed a Motion to Value the Collateral, which is set for hearing on February 2, 2016. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

The basis for the Trustee's second objection is that the Debtor is $440.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

44. 15-29479-E-13 ANDRE WILLIAMS
KO-1 Pro Se

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
12-15-15 [12]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 15, 2015 By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 Motion to Confirm Absence of the Automatic Stay is granted.

One Shot Mining Company ("Movant") filed the instant Motion for Order Confirming that the Automatic Stay did not Go into Effect and that the Current Filing was Part of a Scheme to Delay, Hinder, or Defraud on December 15, 2015. Dckt. 12. The Movant asserts that the Creditor holds a first deed of trust on the real property commonly known as 14530 Lakeshore Drive, Clearlake, California ("Property"), owned by Andre Williams ("Debtor") and Karen Williams.

The Movant's Motion alleges the following:

1. The Debtor and Karen Williams are indebted to Creditor under a loan made on September 17, 2996 in the principal amount of $122,383.00 which is secured by a first deed of trust on the Property.

2. One Shot obtained a default judgment of foreclosure and order of sale on August 16, 2003 on a loan made to Debtor and Karen Williams by a second deed of trust on the Property. On December 8, 2015, a Sheriff's sale of the Property was completed pursuant to the Default Judgment.

3. The Debtor previously filed a case under Chapter 13 on February 7, 2014, Eastern District of California Case No. 14-21158. The case was dismissed on July 14, 2014 for unreasonable delay, failure to make plan payments, and failure to provide tax documents.

4. The Debtor previously filed a Chapter 13 case on August 14, 2014, Eastern District of California, Case No. 14-28291. The Creditor obtained an order vacating the automatic stay provisions on the Property on January 29, 2015. The case was dismissed on March 6, 2015 for failure to make plan payments.

5. The Debtor filed a Chapter 13 case on June 1, 2015 in the Central District of California, Case No. 15-11921. The Creditor obtained an order confirming that no stay went into effect on July 13, 2015. The case was dismissed due to Debtor's failure to attend the Meeting of Creditors and failure to make plan payments on July 30, 2015.

6. The instant case was filed on December 7, 2015.

The Movant seeks:

1. The court to enter an order confirming that the automatic stay did not go into effect upon the filing of the instant bankruptcy case pursuant to 11 U.S.C. § 362(c)(4)(A) such that the Creditor may pursue any and all remedies available to it under the terms of the loan documents which are the subject of is claim in this matter, including, but not limited to, foreclosure of its mortgage deed and security agreement and the prosecution of any remedies available to it under state law in order to obtain possession of and sell the Property.

2. The court find that Debtors' three most recent bankruptcy cases each involve the Property, that Debtors have filed the instant bankruptcy case to delay, hinder, or defraud creditors, and issue an order including language consistent with that finding and consistent with 11 U.S.C. § 362(d)(4).

3. The court waive the 14-day stay period of Fed. R. Bankr. P. 4001(a)(3).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on December 18, 2015.

APPLICABLE LAW

Under 11 U.S.C. § 362(c)(4)(A)(I), the automatic stay does not go into effect of a later filed case if a debtor has had 2 or more single or joint cases pending within the previous year but were dismissed. A party in

interest may request the court to "promptly enter an order confirming that no stay is in effect. 11 U.S.C. § 362(c)(4)(A)(ii).

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

DISCUSSION

One Shot Mining Company ("Movant") filed the instant Motion for Order Confirming that the Automatic Stay did not Go into Effect and that the Current Filing was Part of a Scheme to Delay, Hinder, or Defraud on December 15, 2015. Dckt. 12. The Movant asserts that the Creditor holds a first deed of trust on the real property commonly known as 14530 Lakeshore Drive, Clearlake, California ("Property"), owned by Andre Williams ("Debtor") and Karen Williams.

The Movant's Motion alleges the following:

1. The Debtor and Karen Williams are indebted to Creditor under a loan made on September 17, 2996 in the principal amount of $122,383.00 which is secured by a first deed of trust on the Property.

2. One Shot obtained a default judgment of foreclosure and order of sale on August 16, 2003 on a loan made to Debtor and Karen Williams by a second deed of trust on the Property. On December 8, 2015, a Sheriff's sale of the Property was completed pursuant to the Default Judgment.

3. The Debtor previously filed a case under Chapter 13 on February 7, 2014, Eastern District of California Case No. 14-21158. The case was dismissed on July 14, 2014 for unreasonable delay, failure to make plan payments, and failure to provide tax documents.

4. The Debtor previously filed a Chapter 13 case on August 14, 2014, Eastern District of California, Case No. 14-28291. The Creditor obtained an order vacating the automatic stay provisions on the Property on January 29, 2015. The case was dismissed on March 6, 2015 for failure to make plan payments.

5. The Debtor filed a Chapter 13 case on June 1, 2015 in the Central District of California, Case No. 15-11921. The Creditor obtained an order confirming that no stay went into effect on July 13, 2015. The case was dismissed due to Debtor's failure to attend the Meeting of Creditors and failure to make plan payments on July 30, 2015.

6. The instant case was filed on December 7, 2015.

The Movant seeks:

1. The court to enter an order confirming that the automatic stay did not go into effect upon the filing of the instant bankruptcy case pursuant to 11 U.S.C. § 362(c)(4)(A) such that the Creditor may pursue any and all

remedies available to it under the terms of the loan documents which are the subject of is claim in this matter, including, but not limited to, foreclosure of its mortgage deed and security agreement and the prosecution of any remedies available to it under state law in order to obtain possession of and sell the Property.

2. The court find that Debtors' three most recent bankruptcy cases each involve the Property, that Debtors have filed the instant bankruptcy case to delay, hinder, or defraud creditors, and issue an order including language consistent with that finding and consistent with 11 U.S.C. § 362(d)(4).

3. The court waive the 14-day stay period of Fed. R. Bankr. P. 4001(a)(3).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on December 18, 2015.

APPLICABLE LAW

Under 11 U.S.C. § 362(c)(4)(A)(I), the automatic stay does not go into effect of a later filed case if a debtor has had 2 or more single or joint cases pending within the previous year but were dismissed. A party in interest may request the court to "promptly enter an order confirming that no stay is in effect. 11 U.S.C. § 362(c)(4)(A)(ii).

11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 Collier on Bankruptcy ¶ 362.07 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

DISCUSSION

Here, the Movant has established that the Debtor has filed three cases that were pending within the previous year but were dismissed. There is a total of four cases that have been pending within the last two years, all appearing to have been filed in an effort to prevent the foreclosure on the Property. While the court is cognizant that it is common in bankruptcy for debtors to file bankruptcy on the eve of a foreclosure sale, the repeated filing of the Debtor to prevent the Movant from exercising their rights is not permissible.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases. The Debtor has not only filed multiple bankruptcies, but have also filed them in different districts. The Debtor in each of these cases did not perform the bare minimum requirements of being a debtor. Once the Creditor received some form of confirmation that no stay was in effect, the Debtor would then "move on" to another case to procedurally hold up the Creditor.

The court shall issue a minute order terminating and vacating the automatic stay to allow One Shot Mining Company, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property. The court also grants relief pursuant to 11 U.S.C. § (d)(4).

The moving party has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that no automatic stay went into effect upon the commencement of Case No. 14-29493 under the provisions of 11 U.S.C. § 362(c)(4)(A)(I) and One Shot Mining Company, their agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 14530 Lakeshore Drive, Clearlake, California.
>
> **IT IS FURTHER ORDERED** that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived.
>
> No other or additional relief is granted.

45. 13-34982-E-13 HUGO HERREROS **MOTION TO APPROVE LOAN**
TOG-7 Thomas Gillis **MODIFICATION**
12-1-15 [59]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Hugo Herreros ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,194.00 a month to $983.51 a month. The modification will change the interest rate to a fixed rate of 4.625%. The new principal balance will be $146,880.37 and will mature on October 1, 2055.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on December 17, 2015.

The Motion is supported by the Declaration of [name of declarant]. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The modification allows the Debtor to reduce the monthly mortgage payments, allowing the Debtor to save his home. 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 to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Hugo Herreros having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Hugo Herreros ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 6864 Kettering Circle, Fair Oaks, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 62.

46. 15-28582-E-13 LYNN SANSOM **MOTION TO VALUE COLLATERAL OF**
GG-1 Gerald Glazer **GM FINANCIAL**
11-24-15 [14]

Tentative Ruling: The Motion to Value secured claim 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 23, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim 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 and other parties in interest are entered.

The Motion to Value secured claim of GM Financial ("Creditor") is denied without prejudice.

The Motion filed by Lynn Marie Sansom ("Debtor") to value the secured claim of GM Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Mercedes Benz C300 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $14,202.00 as of the petition filing date. As the owner, the 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).

Unfortunately, the Debtor does not provide the date when the lien on the Vehicle's title secures a purchase-money loan was incurred. In order to value a personal vehicle, the lien must have been incurred more than 910 days prior to filing of the petition.

Therefore, without the information as to when the lien was incurred, the court cannot grant the Motion. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Lynn Marie Sansom (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice

47. 15-28582-E-13 LYNN SANSOM
DPC-1 Gerald Glazer

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-16-15 [25]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on the Debtor's Motion to Value Collateral of GM Financial.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of GM Financial. However, the court denied the Motion to Value due to the Debtor failing to state when the lien was incurred. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

48. 15-28582-E-13 LYNN SANSOM
PPR-1 Gerald Glazer

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
12-3-15 [20]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on December 3, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to overrule the Objection.

U.S. Bank National Association, the Creditor, opposes confirmation of the Plan on the basis that:

1. The plan is not adequately funded to pay the full arrerage amount of Creditor. The arrearages are in the amount of $1,583.66 as stated on Proof of Claim No. 2.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on December 22, 2015. Dckt. 29. The Debtor states that the matter has been resolved through stipulation.

STIPULATION

On December 29, 2015, the parties filed a stipulation. Dckt. 31. The Stipulation provides the following:

1. No disbursements are to be made by the Trustee towards the Creditor's pre-petition arrears on Proof of Claim No. 2.

2. Upon approval of the stipulation resolving Chapter 13 plan treatment, the Objection is deemed withdrawn.

3. Upon approval of the stipulation resolving Chapter 13 plan treatment, the Notice of Taking Deposition Duces Tecum is deemed withdrawn.

4. Creditor may, at its option, amend the Proof of Claim to reflect that there are no pre-petition arrears; however, should Creditor decide not to amend the Proof of Claim, this Stipulation and Order shall control over The treatment of Creditor's pre-petition arrerages.

5. In the event the instant Case is dismissed or discharged, this Stipulation and the Order based thereon shall be terminated; however, Creditor will apply all payments received to principal, interest and the Escrow Advance and no other fees or charges may arise.

DISCUSSION

On January 12, 2016, the court denied confirmation of the instant Plan based on the Trustee's objection that the plan relies on the Motion to Value Collateral of GM Financial, which was also denied.

In light of the purported stipulation, however, the instant Objection is deemed overruled.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is overruled. The court has denied confirmation based on the Objection of the Chapter 13 Trustee.

49. 15-27283-E-13 PLG-1 — GABRIELA RENTERIA AND JESUS MARTINEZ, Steven Alpert — MOTION TO CONFIRM PLAN, 11-23-15 [26]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 23, 2015. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Amended Plan.

Gabriela Renteria and Jesus Martinez ("Debtor") filed the instant Motion to Confirm the Amended Hearing on November 23, 2015. Dckt. 26.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a nonopposition on December 16, 2015.

CREDITOR'S OBJECTION

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor"), filed an objection to the instant Motion on December 22, 2015. Dckt. 44. In sum, the Creditor asserts that the Debtor's plan fails to acknowledge Creditor has a purchase money security interest. The Creditor asserts that the Debtor's plan does not provide sufficient adequate protection payments.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Creditor's objection is well-taken. A review of the proposed plan shows that the Debtor has indicated that the Creditor's claim is not a purchase money security interest. Dckt. 30. However, the Creditor is listed as a claimant whose claim has not been reduced based on the value of the collateral and provides for the full $12,173.84 claim amount of Creditor.

To the court, it appears that the Debtor inadvertently wrote "N" rather than "Y" on the Creditor's claim as to whether it is a purchase money security interest. This appears to be a mere scrivener's error which the Debtor can correct in the order confirming.

Therefore, after correcting the Creditor's class 2 claim to indicate that it is a purchase money security interest, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 23, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting Class 2 to indicate that Capital One Auto Finance has a purchase money security interest, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

50. 14-23685-E-13 PAUL LUDOVINA
LBG-7 Lucas Garcia

OBJECTION TO CLAIM OF STATE BOARD OF EQUALIZATION, CLAIM NUMBER 7
11-9-15 [123]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 9, 2015. By the court's calculation, 64 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to Proof of Claim Number 7 of California State Board of Equalization is sustained and the claim is disallowed in its entirety.

Paul Ludovina, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of California State Board of Equalization ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority in the amount of $50,000.00. Objector asserts that the claim is not substantiated with enough particularity and that the claim is based on an event that has not yet occurred. Namely, the Objector asserts that the Objector has requested extra salary payment toward his income and agreed with the corporation that he would address this debt in his Chapter 13 plan, using it as a vehicle by which to pay the Creditor in full. However, the Creditor refused to participate and continued to assess levy actions against the business. The Objector states that he relinquished the necessary salary increase back to the corporation. Furthermore, the Objector asserts that there are no attachments to substantiate the claim.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Objection on November 12, 2015. Dckt. 128. The Trustee states that the Proof of Claim No. 1 was filed on behalf of the Creditor by the Objector's attorney. The Trustee states he does not have an opposition due to the claim having no attachments, the claim not yet being owed, and the Objector's declaration substantiating stuff.

DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The court concurs with the Objector and Trustee. The instant claim was filed by the Objector's attorney on June 20, 2014. The deadline for governmental agencies to file Proofs of Claim was October 7, 2014. Dckt. 1. The Creditor has not filed a Proof of Claim. There are no attachments to the claim to substantiate the claim. Additionally, the Objector states in the Objection and testifies in the declaration that the debt is not yet owed.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim 7 is sustained.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of California State Board of Equalization, Creditor filed in this case by Paul Ludovina having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 7 of California State Board of Equalization is sustained and the claim is disallowed in its entirety.

51. 14-30994-E-13 JOHN MONROE **MOTION TO MODIFY PLAN**
HLG-3 Kristy Hernandez **11-13-15 [74]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2015. By the court's calculation, 62 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

John Monroe, Jr. ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 13, 2015. Dckt. 74.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 18, 2015. Dckt. 83. The Trustee opposes confirmation on the following grounds:

1. The plan will complete in more than the 60 months proposed. This is due to the increase in the Debtor's mortgage payment from $2,655.09 to $2,733.46 pursuant to the Notice of Mortgage Payment Change and the priority claim of the Internal Revenue Service being higher than what is scheduled.

2. The Debtor is delinquent $3,000.00 in plan payments.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objections are well-taken.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 75 months due to the increase in mortgage payment and the Debtor not fully providing for the Internal Revenue Service priority claim in full. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

The basis for the Trustee's second objection is that the Debtor is $3,000.00 delinquent in plan payments, which represents multiple months of the plan payment. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

52. 11-48095-E-13 MICHAEL NEUMANN
LDD-5 Linda Deos

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
10-16-15 [107]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 3007-1 Objection to Notice of Mortgage Payment Change.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on October 16, 2015. By the court's calculation, 60 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, 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.

The hearing on the Objection to Notice of Mortgage Payment Change filed by Federal National Mortgage Association is continued to 3:00 p.m. on February 2, 2016. The court orders that lead counsel for Debtor and lead counsel for Federal National Mortgage Association appear at the continued hearing in person (no telephonic appearances permitted for counsel) if the matter has not been resolved and removed from calendar.

Michael Neumann ("Debtor") filed the instant Objection to Federal

National Mortgage Association's Notice of Mortgage Payment Change, Proof of Claim No. 1-2 on October 16, 2015. Dckt. 107. The Debtor seeks for the court to deny Federal National Mortgage Association's ("FNMA" or "Creditor") Notice of Mortgage Payment Change filed on October 9, 2015 and for the award of attorney fees and expenses in the amount of $900.00.

STIPULATION FOR CONTINUANCE - Filed January 11, 2016

On January 11, 2016, one day before this multi-continued hearing, the Parties filed another Stipulation requesting that the court continue the hearing for yet another month. Dckt. 124. In the "Whereas" paragraphs of the Stipulation, the Parties state the following reasons for requesting the continuance, rather than prosecution, of this Contested Matter:

> "**WHEREAS**, FNMA is in the process of researching the issues set forth in Debtor's Objection. In particular, FNMA is reviewing the escrow account, reviewing Debtor's forthcoming proof of insurance and proof of payment of escrow funds, substantiating the change in the principal and interest payment with Debtor's counsel, and if necessary, correcting any elements of Debtor's loan account to fully resolve Debtor's Objection to the Payment Change;
>
> **WHEREAS**, the Parties have met and conferred regarding a resolution of Debtor's Objection to FNMA's Payment Change and have agreed that continuing the hearing on the Objection to February 2, 2016 at 3:00 PM will best facilitate settlement;...."

This Objection to the proposed mortgage payment change was filed on October 16, 2015. In the eighty-eight days which has passed since the objection was filed, FNMA purports to be "researching" the issues set forth in the objection. Additionally, FNMA is continuing to review the escrow account, proof of insurance, proof of payment of funds, and correcting any errors in FNMA's records concerning this obligation.

The grounds in the January 11, 2016 Stipulation are the same as stated to the court thirty days earlier in requesting continuance of the December 11, 2015 hearing:

> "**WHEREAS**, FNMA is in the process of researching the issues set forth in Debtor's Objection. In particular, FNMA is reviewing the escrow account, reviewing Debtor's forthcoming proof of insurance and proof of payment of escrow funds, substantiating the change in the principal and interest payment with Debtor's counsel, and if necessary, correcting any elements of Debtor's loan account to fully resolve Debtor's Objection to the Payment Change;
>
> **WHEREAS**, the Parties have met and conferred regarding a resolution of Debtor's Objection to FNMA's Payment Change and have agreed that continuing the hearing on the Objection to January 12, 2016 at 3:00 PM will best facilitate

settlement;...."

Dckt. 118.

These December 2015 grounds are merely the parroting of the grounds stated to the court in October 2015 by FNMA and Debtor:

> "**WHEREAS**, FNMA is in the process of researching the issues set forth in Debtor's Objection. In particular, FNMA is reviewing the escrow account, reviewing Debtor's forthcoming proof of insurance and proof of payment of escrow funds, substantiating the change in the principal and interest payment with Debtor's counsel, and if necessary, correcting any elements of Debtor's loan account to fully resolve Debtor's Objection to the Payment Change;
>
> **WHEREAS**, the Parties have met and conferred regarding a resolution of Debtor's Objection to FNMA's Payment Change and have agreed that continuing the hearing on the Objection to December 15, 2015 at 3:00 PM will best facilitate settlement;...."

Though months have passed since FNMA confirmed that it is investigating, reviewing, and correcting, it offers no representations to the court that there has been any headway, that it's investigation or research has produced any useful information, or that there is anything which is being resolved. Rather, boilerplate representations are made to the court from this sophisticated creditor.

As FNMA is well aware, the prior loan servicer and counsel for that loan servicer were the subject of an order to show cause concerning their conduct in this case. Dckt. 92. The court addresses these shortcomings in detail in its Ruling on the Order to Show Cause. Civil Minutes, Dckt. 115.

The court continues this hearing one final time. If this matter has not been fully resolved, at the continued hearing the appearance of lead counsel for each party will be required to appear at the hearing (no telephonic appearances permitted). The court does not order, at this time, the in-person appearance of the Debtor or senior management of FNMA (though their attendance in court or telephonically is permitted).

STIPULATION FOR CONTINUANCE - Filed December 11, 2015

On December 11, 2015, the parties filed a stipulation requesting that the Objection be continued to 3:00 p.m. on January 12, 2016 to allow the parties the chance to settle. Dckt. 118.

Order

On December 12, 2015, the court issued an order continuing the Objection to 3:00 p.m. on January 12, 2016. Dckt. 120. The court further ordered that Federal National Mortgage Association's deadline to file a responsive pleading is extended to December 30, 2015.

STIPULATION FOR CONTINUANCE - Filed October 29, 2015

On October 29, 2015, the parties filed a stipulation requesting that the Objection be continued to 3:00 p.m. on December 15, 2015 to allow the parties the chance to settle.

Order

On October 29, 2015, the court issued an order continuing the Objection to 3:00 p.m. on December 15, 2015. Dckt. 114. The court further ordered that Federal National Mortgage Association's deadline to file a responsive pleading is extended to December 1, 2015.

REVIEW OF OBJECTION

The Debtor states that Ocwen Loan Servicing, LLC filed a Notice of Mortgage Payment Change on February 18,, 2013 which lowered Debtor's escrow payment from $361.78 to $329.36. Debtor did not dispute this change nor was there any mention of an escrow shortage of $4,280.95.

The Debtor states that Ocwen Loan Servicing, LLC filed another Notice of Mortgage Payment Change on February 28, 2014 which lowered the Debtor's escrow payment from $329.36 to $265.84. Once again, the Debtor states that he did not dispute the change nor was there any mention of any escrow shortage.

Ocwen Loan Servicing, LLC filed another Notice of Mortgage Payment Change on April 24, 2015 which proposes to increase the Debtor's escrow payment from $265.84 to $569.31. The Debtor states that Ocwen Loan Servicing, LLC alleges the increase is necessary because of the cost of force placed hazard insurance ($739.00 and a Proof of Claim Escrow Shortage Adjustment of $4,280.95.

The Debtor objected to the adjustment based on the following:

1. The Proof of Claim Escrow Shortage Adjustment of $4,280.95 identified by Ocwen Loan Servicing, LLC in its Notice is already being paid by Debtor through his Chapter 13 plan and the Proof of Claim filed by the predecessor in interest, GMAC. In the Proof of Claim No. 1, GMAC claimed $4,473.33 in pre-petition fees, expenses, and charges.

2. Debtor already paid Ocwen Loan Servicing, LLC to cover an escrow shortage.

3. Debtor has obtained hazard insurance from USAA for $364.00 effective July 1, 2015.

On August 13, 2015, the court sustained the Debtor's objection and disallowed the stated changes in the requested escrow payments in the April 24, 2015 Notice of Mortgage Payment Change. Dckt. 84.

On August 31, 2015, Creditor filed a Notice of Transfer of Claim from Ocwen Loan Servicing, LLC to itself. Dckt. 89. The claim was actually transferred on October 6, 2015. Dckt. 106.

On October 9, 2015, the Creditor file a Notice of Mortgage Payment Change which proposed an increase in Debtor's escrow payment from $265.84 to $270.40. Creditor argues that the increase is necessary because of the cost of force placed hazard insurance in the amount of $402.47 and a Post Petition Escrow Shortage Adjustment of $160.99. The Debtor argues that there is no explanation given for the increase in Debtor's principal and interest payment nor is there any evidence submitted to justify such increase.

The Debtor objects to the adjustment based on the following:

1. The Proof of Claim Escrow Shortage Adjustment of $4,280.95 identified by Ocwen Loan Servicing, LLC in its Notice is already being paid by Debtor through his Chapter 13 plan and the Proof of Claim filed by the predecessor in interest, GMAC. In the Proof of Claim No. 1, GMAC claimed $4,473.33 in pre-petition fees, expenses, and charges.

2. Debtor already paid Ocwen Loan Servicing, LLC to cover an escrow shortage.

3. Debtor has obtained hazard insurance from USAA for $364.00 effective July 1, 2015.

APPLICABLE LAW

Fed. R. Bankr. P. 3002.1 deals with "Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence." The Rule provides for the following, in relevant part:

> (b) Notice of payment changes
>
> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.
>
> (c) Notice of fees, expenses, and charges
>
> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred. . . .
>
> (I) Failure to notify
>
> If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

NOTICE OF MORTGAGE PAYMENT CHANGE

The court has reviewed the Notice of Mortgage Payment Change filed on October 9, 2015, filed by Creditor. The information in the Notice is summarized as follows:

1. Current Payment:

   a. Principal and Interest = $644.94
   b. Escrow = $265.84
   c. Total = $910.78

2. New Payment Effective 11/1/15

   a. Principal and Interest = $749.28
   b. Escrow = $267.72
   c. Shortage Spread = $2.68
   d. Total = $1,019.68

3. The Notice includes a history of this escrow as follows

Month	Projected Payments to Escrow	Projected Payments from Escrow	Description	Projected Ending Balance
Beginning Balance				$-96.11
Post Petition Beginning Balance				$1,846.03
November 2015	$267.72	$1,405.09	County Tax	$708.66
December 2015	$267.72			$976.38
January 2016	$267.72			$1,244.10
February 2016	$267.72			$1,511.82
March 2016	$267.72	$1,405.09	Count Tax	$374.45
April 2016	$267.72			$642.17
May 2016	$267.72			$909.89
June 2016	$267.72			$1,177.61

July 2016	$267.72	$402.47	Hazard Insurance	$1,042.86
August 2016	$267.72			$1,310.58
September 2016	$267.72			$1,578.30
October 2016	$267.72			$1,846.02
TOTALS	$3,212.64	$3,212.65		

4. The Notice states that the projected beginning balance of the escrow account is $1,846.03. The Notice further states that the minimum required balance of the escrow account is $2,007.02. This means a "post-petition shortage and/or deficiency of $160.99." The Notice states that Creditor has spread out the shortage over the next 60 installments and included the amount in the escrow payment.

DISCUSSION

To date, the Creditor has failed to file a responsive pleading. Instead, there have been repeated requests for continuance.

The confirmed plan provides for the payment to "GMAC Mortgage" in Class 1, with a monthly dividend of $65.95 payment in month 7, $330.85 for months 8-55, and $53.25 for month 56.

The Notice of Mortgage Payment Change filed by Ocwen Loan Servicing, LLC on April 24, 2015 states that there a "post-petition shortage and/or deficiency of $160.99." The Notice states that Creditor has spread out the shortage over the next 60 installments and included the amount in the escrow payment, which resulted in a change of escrow from $265.84 to $270.40 (267.72 in escrow and $2.68 in escrow shortage spread).

The attached statement to the Notice also indicates that the Principal and Interest have been increased from $644.94 to $749.28. The Creditor does not provide any information as to why the principal and interest have increased. The only information provided for this increase is:

> The principal and interest payments reflect the contractual amount due under the note, which can be modified with a mutually agreed upon payment plan. In addition, the new principal and interest payment and the total new payment may not reflect any changes due to interest rate adjustments. You will receive a separate notice for interest rate adjustments.

No further information or justification is provided by the Creditor.

At this point, the Debtor asserts that all of the payments required under the Chapter 13 Plan for both the current monthly payment and the pre-petition arrearage have been made to the Trustee. The court sustains the Objection and finds that Creditor have not provided evidence that a basis

exists for increasing the monthly payment.

It is troubling that Creditor, following the court sustaining the Debtor's prior objection to the Notice of Mortgage Payment Change, did not provide for sufficient explanation and justification for the increase. This is especially troubling given the fact that the court had to order Ocwen Loan Servicing, LLC into court in order to provide evidence as to who is the actual holder of the note.

ATTORNEYS' FEES

In the Objection to Notice of Mortgage Payment Change Debtor requests the award of $900.00 in legal fees to it as the prevailing party. The Objection directs the court to Federal Rule of Bankruptcy Procedure 3002.1, which provides for an award of attorneys' fees for the Debtor when the person asserting the mortgage payment change fails (1) to provide the information required in the notice of mortgage payment change, (2) to provide the information supporting a notice of post-petition fees, charges, and costs, or (3) filing a response to a notice of final cure payment. Fed. R. Bankr. P. 3002.1(I).

As addressed above, Creditor has failed to provide in the Notice of Mortgage Payment Change information upon which the court can determine such an increase is proper.

The court also notes that previously in this case GMAC Mortgage, LLC has stated that it was entitled to post-petition attorneys' fees on the claim for which the current Notice of Mortgage Payment Change has been filed by Ocwen Loan Servicing, LLC, and its creditor client or principal. See Notice of Post-petition Mortgage Fees, Expenses, and Charges filed on April 9, 2012, asserting the right to $425.00 in post-petition attorneys' fees. Attached to the Proof of Claim No. 1 filed by GMAC Mortgage, Inc. are copies of the Promissory Note and Deed of Trust upon which the Ocwen Loan Servicing, LLC demand for an increased post-petition mortgage payment is based. Paragraph 22 of the Deed of Trust provides, "If the default [breach of any covenant or agreement in the Deed of Trust] is not cured. . . Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to reasonable attorneys' fees and costs of title evidence." The Note in Paragraph 6.(E) provides that in the event of a default in payments, the borrower is obligated to pay the Note holder costs and expenses, including reasonable attorneys' fees.

California Code of Civil Procedure § 1717(a) provides that for any action on a contract in which the contract provides for attorneys' fees and costs to be awarded to one of the parties if they prevail, then the other party shall also be entitled to enforce that provision (even though not named) if such other party is the prevailing party. In this case, through the Notice of [Post-Petition] Mortgage Payment Change Ocwen Loan Servicing, LLC, asserted defaults in the Note and Deed of Trust, asserting that required monetary amounts were not paid.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to Notice of Mortgage Payment Change filed by Michael Neumann, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Objection to Notice of Mortgage Payment Change filed by Federal National Mortgage Association is continued to 3:00 p.m. on February 2, 2016.

IT IS FURTHER ORDERED that Linda Dios, counsel for Debtor, and Nichole L. Glowin, counsel for Federal National Mortgage Association each appear at the continued hearing in person (no telephonic appearances permitted for counsel) if the matter has not been resolved and removed from calendar by the court.

IT IS FURTHER ORDERED that if this matter has not been resolved and removed from the calendar by the court, on or before January 29, 2016, Federal National Mortgage Association shall file a Status Report in which it provides the court with the reasons for the continuing investigation, review, and delay in addressing the Objection, what further investigation and review is anticipated, and a good faith projection of when it will be able to respond to the Debtor’s objections if the court further continues the hearing.

53. 15-20696-E-13 ALEJANDRO GARCIA MOTION TO MODIFY PLAN
HLG-1 Kristy Hernandez 11-6-15 [28]

ATTENDANCE OF KRISTY HERNANDEZ, COUNSEL FOR DEBTOR REQUIRED FOR HEARING
No Telephonic Appearance Permitted

No Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 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).

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2015. By the court's calculation, 67 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to xxxxx the Motion to Confirm the Modified Plan.

Alejandro Garcia, Sr. ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 6, 2015. Dckt. 28.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 29, 2015. Dckt. 34. The Trustee states that the Debtor has improperly inserted additional provisions in the plan while checking that no additional provisions are amended at the end of the plan on a separate sheet of paper.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken. A review of the proposed plan shows that the Debtor and Debtor's counsel have not properly complied with the rules concerning adding additional provisions. Rather than properly attaching the additional provisions on a separate sheet and indicating in Section 6 that there are appended additional provisions, the Debtor merely adds them on the last signature page. The "additional provisions" are the following:

> Payments into plan shall be as follows:
> $535.00 per month for 9 months
> $250.00 per month for 51 months

Dckt. 29.

These requirements are well know and have been uniformly enforced in this court. The requirement for a separate page exists so that any changes to the general Chapter 13 terms clearly stands out. No, "well it's just a minor change" exception exists. Attorneys and parties are not left to guess when the Bankruptcy Code and Rules need to be followed and when the court will just let it slide.

At the hearing xxxxxxxxxxxxxxxxxxx.

Therefore, after the Debtor clarifies the monthly payments in the order confirming, the modified Plan xxxxxxx with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is xxxxxxx.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxxxxxx.

54. 15-28596-E-13 FLOYDETTE JAMES **OBJECTION TO CONFIRMATION OF**
DPC-1 Steven Alpert **PLAN BY DAVID P. CUSICK**
12-16-15 [14]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing ----------.

The court's decision is to sustained the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to file a Motion to Value Collateral of Wells Fargo Bank on which the proposed plan is dependent upon.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Wells Fargo Bank. However, the Debtor has failed to file a Motion to Value the Collateral of Wells Fargo Bank. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

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

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

55. 15-22798-E-13 PGM-2 PARKER/DONNA PUGH Peter Macaluso

CONTINUED AMENDED MOTION TO APPROVE LOAN MODIFICATION 12-18-15 [122]

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 22, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Motion to Approve Loan Modification is granted

The Motion to Approve Loan Modification filed by Parker and Donna Pugh ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The new principal balance will be $326,208.11. The interest rate will be 2.00% and the maturity date of the loan will be April 1, 2039. The payment amount for the first 60 months will be $1,487.74 at 2.00%.

The Motion requests that the court authorize Debtor to enter into a loan modification with "Wells Fargo Home Mortgage." In reviewing the Loan Modification documents (Exhibit A, Dckt. 111), a person known as "Wells Fargo Home Mortgage" does not appear to be a party to the modification. On the Modification Agreement (Deed of Trust), the "lender" is identified as "Wells Fargo Bank, N.A." Exhibit A, Dckt. 111 at 3. All of the terms of the Agreement are with "Wells Fargo Bank, N.A." The Agreement is executed for Wells Fargo Bank, N.A. by one of the Bank's Vice Presidents. *Id.* at 13. The Loan Modification document was prepared by Wells Fargo Bank, N.A. *Id.*

In reviewing the on-line data base provided by the California Secretary of State, the court notes that there formally was an entity known as "Wells Fargo Home Mortgage, Inc." http://kepler.sos.ca.gov/. This entity is identified as having been "merged out." The California Secretary of State also identifies two other "Wells Fargo Home Mortgage" entities: (1) Wells Fargo Home Mortgage of Hawaii, LLC (its status listed as cancelled) and Wells Fargo Home Mortgage, LLC (status listed as active, but "agent resigned 05/20/2014). *Id.*

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms. Debtor testifies under penalty of perjury, "That we have been offered a loan modification by our lender, **Wells Fargo Home Mortgage**, under HAMP." Dckt. 110, ¶ 3 [emphasis added].

David Cusick, the Chapter 13 Trustee, filed a non-opposition on November 10, 2015.

Wells Fargo Bank, N.A. filed proof of claim No. 3 in this case on June 11, 2015. The creditor is identified as **Wells Fargo Bank, N.A.** The Promissory Note attached to Proof of Claim No. 3 identifies the lender and payee under the notes as **Wells Fargo Bank, N.A.** Proof of Claim No. 3 Attachment, pg. 6. The Deed of Trust securing the Note attached to Proof of Claim No. 3 identifies Wells Fargo Bank, N.A. as the Lender and the beneficiary under the Deed of Trust. *Id.* at 11-13.

On September 2, 2015, a Notice of Mortgage Payment Change was filed, naming **Wells Fargo Bank, N.A.** as the creditor. The Notice is signed by a vice president of a "company" identified as "Wells Fargo Home Mortgage."

On November 9, 2015, a second Notice of Mortgage Payment Change was filed, naming **Wells Fargo Bank, N.A.** as the creditor. The Notice is signed by a vice president of a "company" identified as "Wells Fargo Home Mortgage."

NOVEMBER 24, 2015 HEARING

At the hearing, counsel for Debtor requested that the court continue

the hearing and allow him to file amended pleadings and supplemental declarations. He was concerned that if the motion was denied, even without prejudice, the creditor may deem the modification in default and the Debtor lose the opportunity for a loan modification.

To minimize the potential for the Debtor to lose the loan modification due to the defective pleadings filed by counsel, the court continued the hearing to 3:00 p.m. on January 12, 2016. Debtor was ordered to file and serve an amended motion and supporting pleadings on or before December 18, 2015.

AMENDED MOTION

On December 18, 2015, the Debtor filed an Amended Motion for Order Approving Permanent Loan Modification. Dckt. 122. The Amended Motion correctly states the party of the loan modification as “Wells Fargo Bank, N.A.” The terms of the loan modification remain the same. The new principal balance will be $326,208.11. The interest rate will be 2.00% and the maturity date of the loan will be April 1, 2039. The payment amount for the first 60 months will be $1,487.74 at 2.00%.

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 to Approve the Loan Modification is granted.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification with Wells Fargo Home Mortgage filed by Parker and Donna Pugh having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Parker and Donna Pugh ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 4383 Middlebury Way, Mather, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 124.