UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 26, 2016 at 2:00 P.M.

1.	15-28606-C-13	MARY LOU MURPHY	OBJECTION TO CONFIRMATION OF
	BF-5	Lauren Rode	PLAN BY FINANCIAL FREEDOM
Also #2			12-21-15 [23]

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Final Ruling: No appearance at the January 26, 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 December 21, 2015. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Financial Freedom ("Creditor") opposes confirmation of the Plan on the basis that the Plan does not propose to cure the pre-petition arrears owed to Creditor, the holder of a claim secured solely by Debtor's principal residence.

Discussion

Pursuant to 11 U.S.C. 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By failing to cure the pre-petition arrears owed to Creditor, the Plan violates 11 U.S.C. 1322(b)(2)'s anti-modification provision.

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 Financial Freedom 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.

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2. 15-28606-C-13 MARY LOU MURPHY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Lauren Rode — 12-21-15 [19]

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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 21, 2015. Fourteen days' notice is required. That requirement was met.

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.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343.

2. The Plan fail to indicate if Debtor will seek court approval for attorney fees by complying with Local Bankruptcy Rule 2016-1(c).

Discussion

Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307.

The court has considered the Trustee's concerns and finds them legitimate. 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 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 confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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3.	15-25208-C-13 DPC-3	ANGELIQUE ONEILL AND ANTHONY LOGAN Peter Macaluso	OBJECTION TO CLAIM OF GALWAY FINANCIAL SERVICES, LLC, CLAIM NUMBER 13 11-20-15 [35]

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Final Ruling: No appearance at the January 26, 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, parties requesting special notice, and Office of the United States Trustee on November 20, 2015. 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 13 of Galway Financial Services, LLC is sustained and the claim is disallowed in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Galway Financial Services, LLC ("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $250.00. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is October 28, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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).

Discussion

The deadline for filing a Proof of Claim in this matter was October 28, 2015. The Creditor's Proof of Claim was filed November 2, 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 Galway Financial Services, LLC, Creditor 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,
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> **IT IS ORDERED** that the objection to Proof of Claim Number 13 of Galway Financial Services, LLC is sustained and the claim is disallowed in its entirety.

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4. 15-28112-C-13 CAREN ARMSTRONG
CA-1 Michael Croddy

MOTION TO VALUE COLLATERAL OF ELITE ACCEPTANCE CORP.
1-12-16 [31]

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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, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. Fourteen days' notice is required. That requirement was met.

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 Elite Acceptance Corp., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Infinity G35. The Debtor seeks to value the property at a replacement value of $8,869.00 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 vehicle's title secures a purchase-money loan incurred in 2009, more than 910 days prior to the filing of the petition, with a balance of approximately $13,903.86. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $8,869.00. *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 Debtor(s) having been presented to te 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 Elite Acceptance Corp. secured by a vehicle commonly known as 2006 Infinity G35, is determined to be a secured claim in the amount of $8,869.00, 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 $8,869.00.

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5. 15-28616-C-13 EMERITO ESPIRITU — OBJECTION TO DISCHARGE BY DAVID P. CUSICK
DPC-2 Timothy Walsh — 12-28-15 [46]

Also #6

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Final Ruling: No appearance at the January 26, 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, parties requesting special notice, and Office of the United States Trustee on December 28, 2015. 28 days' notice is required. That requirement was met.

The Objection to Discharge 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 court's decision is to sustain the Objection.

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on August 26, 2014 (Case No. 14-25078). Debtor filed this Chapter 13 case on October 5, 2015.

DEBTOR'S STATEMENT OF NON-OPPOSITION

Debtor does not oppose the Objection to Discharge.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection 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 the Discharge filed 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 Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-28616.

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6.	15-28616-C-13 JAA-1	EMERITO ESPIRITU Timothy Walsh	OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC 12-24-15 [43]

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Final Ruling: No appearance at the January 26, 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 December 24, 2015. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Ocwen Loan Servicing, LLC, as servicer for the holder of a claim secured solely by Debtor's principal residence, opposes confirmation of the Plan on the basis that the Plan understates the pre-petition arrears owed to the secured creditor.

Discussion

Pursuant to 11 U.S.C. 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By failing to cure the pre-petition arrears owed to the secured creditor, the Plan violates 11 U.S.C. 1322(b)(2)'s anti-modification provision.

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 Ocwen Loan Servicing, LLC Freedom 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.

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7. 15-27421-C-13 REBECCA FRESNOZA CONTINUED MOTION TO SELL
TAG-1 Ted Greene 11-18-15 [24]
Also #8

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

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, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 18, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Sell Property is . . .

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 2671 Waverly Way, Fairfield, California

Debtor has negotiated a short sale of the subject property acceptable to both Nationstar Mortgage and Citi Mortgage and seeks the Court's approval of the sale. The proposed sale price of the property is $220,000 cash. The buyer is David Assell. No net proceeds will be realized by Debtor or available to the Trustee. All creditors with liens and security interests encumbering the subject property which are not voluntarily released will be paid in full simultaneously with the transfer of title to the buyer or held by the escrow holder until agreement by the parties or further court order. All costs of sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds.

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U.S. Bank, N.A.'s Reply

Secured Creditor U.S. Bank, N.A., holder of the senior lien secured by the subject property, requests additional time to review Debtor's short sale application and assess the current value of the property.

Debtor failed to set forth any evidence of a short sale application submitted to Secured Creditor, much less acceptance and approval of the sale. However, Secured Creditor has confirmed that his loan is under review for a short sale but final approval has not yet been provided.

Debtor's Reply

Debtor does not oppose approval of the short sale including this provision and further confirms that she will not conclude any short sale without first obtaining approval from all creditors holding a secured interest in the subject real property.

Trustee's Opposition

Trustee is unaware why the Debtor would be entitled to receive $10,000 for HAFA Relocation from the net proceeds of the sale. Further, Trustee is opposed to Debtor's attorney received legal fees outside of the plan, i.e. $2,200 from the escrow amount.

Debtor's Reply

The Trustee first opposes the Motion on grounds of a discrepancy in the stated value of the real property. In her Schedules, Debtor identifies the fair market value of the property as $200,000 (Exhibit A – Schedule A). At the time of filing the schedules, Debtor believed this to be the fair market value of the property, and the value is based on her own opinion. In the process of listing the property for short sale, an appraisal was conducted, as well as comparable property valuations, and it was determined that the actual market value of the property was $220,000. As shown on Amended Schedule D (Exhibit B –Amended Schedule D), the total secured liens against the property are $357,093. This is substantially higher than the fair market value of the property, and as such neither debtor, nor her co-owner spouse, anticipate any equity proceeds from the sale of the property.

Debtor's spouse, whom she is separated from, will receive a maximum of $10,000 in relocated assistance, as indicated in the Estimated Settlement Statement, as part of the Federal Home Affordable Foreclosure Alternatives Program (hereinafter "HAFA"), which provides relocation assistance to distressed homeowners who are forced to dispose of their home by way of either short sale or deed-in-lieu programs. As the Trustee states, Debtor is not currently living in the property subject to the short sale, and has no interest in the relocation funds. Debtor is working to obtain an amended Estimated Settlement Statement showing Mr. Fresnoza as the party eligible to receive the funds, as opposed to Debtor herself.

The Trustee lastly opposes the Motion on the grounds that the Law Offices of Ted A. Greene, Inc. (hereinafter "LOTAG") is designated on the Estimated Settlement Statement as receiving funds in the amount of $2,200. The funds identified in the Estimated Settlement Statement are payment for negotiating the short-sale of the property, a service rendered outside of the bankruptcy

services, and not included in the scope of the 2016 fees for services relating to the bankruptcy case. Work on obtaining Bankruptcy Court approval of the short-sale, a Chapter 13 Plan that supports the short-sale, and all work within the bankruptcy case is considered to be within the scope of the fees approved under Rule 2016 and properly disclosed in Debtor's Rights and Responsibilities, as referenced by the Chapter 13 Trustee.

Previously

The court continued the matter to allow Secured Creditor time to review the short sale application.

Discussion

At the hearing, the court will inquire as to the status and decision time frame of the short sale application under Creditor's review. The court will also inquire as to whether the Trustee's concerns remain outstanding.

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 Sell Property filed by the 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 . . .

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8. 15-27421-C-13 REBECCA FRESNOZA
TAG-4 Ted Greene

CONTINUED MOTION TO CONFIRM AMENDED PLAN
11-25-15 [43]

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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 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2015. Forty-two days' notice is required. That requirement was met.

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 Plan.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan appears to have been filed in bad faith, with the sole intent to delay payment to creditors. Debtor is proposing no payment to Class 1 secured creditors.

2. The plan is not the Debtor's best efforts under § 1325(b). Debtor is below median income proposing a 60 month plan paying $55 per month with 0% to general unsecured creditors.

3. It appears Debtor is merely paying attorney fees and doing nothing to attempt to reorganize their debts. Thus, this case is a disguised Chapter 7.

Debtor's Reply

A "fee-only plan," or a plan which pays only the attorney fees and administrative expenses to the Trustee, are not per se in bad faith. *Berlinger v. Pappalardo,* 674 F.3d 80 (1st Cir. 2012).

In fact, Debtor's Plan does propose to pay a substantial portion of the Class 1 Claims of Nationstar Mortgage and Citi Mortgage, as holders of the First and Second Deeds of Trust on Debtor's real property, with proceeds of a short sale.

If Debtor is not allowed to complete her shortsale, Nationstar Mortgage, holder of the First Deed of Trust, would be required to complete foreclosure proceedings against the real property. There is a very real risk that Nationstar would either receive less than the fair market value of the residence, or be forced to resume ownership of the property, incurring additional expenses for maintenance, upkeep, and the administrative expenses of completing the foreclosure.

Discussion

As the Trustee's concerns highlight, the Plan does not comply with 11 U.S.C. §§ 1322 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.

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9. 12-40030-C-13 DBJ-7 | RICHARD/GLORIE JONES
Douglas Jacobs | MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH ALAN S. FUKUSHIMA
12-15-15 [119]

Final Ruling: No appearance at the January 26, 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, parties requesting special notice, and Office of the United States Trustee on December 15, 2015. 28 days' notice is required.

The Motion For Approval of Compromise 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 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 for Approval of Compromise is granted.

Richard and Glorie Jones, the Chapter 13 Debtors, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Alan S. Fukishima, the Chapter 7 Trustee and plaintiff in the Tracey gateway LLC bankruptcy case adversary dispute ("Settlor") filed against Debtor Richard Jones. The claims and disputes to be resolved by the proposed settlement are dismisall of the adversary complaint in exchange for withdrawal of the proof of claim filed by Debtor. (the full terms of the Settlement as set forth in the Settlement Agreement):

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a statement of nonopposition.

LEGAL STANDARD

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent*

Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

DISCUSSION

Movant argues that the four factors have been met.

Probability of Success

The Tracey bankruptcy resulted from a failed development project in Tracy, California. The adversary filed by the Chapter 7 trustee attempts to quantify and recover some of the funds spent on that development and lists this debtor, Richard Jones as one of the responsible parties. In reality, Mr. Jones played a small part in the development, never received any compensation and is probably more likely to prevail on his claim than to lose if the adversary were to proceed against him.

Also, as can be seen from the declaration of Richard Jones filed herewith, he never expected and doesn't expect now, to ever receive anything by virtue of his claim in the Tracey bankruptcy. Thus, it is of little or no value to either Mr. Jones or his Chapter 13 case.

Difficulties in Collection

There are obvious difficulties in obtaining any relief in the adversary against this debtor (due to his own bankruptcy) and the claim filed by this debtor will probably go un-paid due to the bankruptcy of Tracey Gateway.

Expense, Inconvenience and Delay of Continued Litigation

By entering into the agreement, both sides are resolving their positions without undertaking any further litigation. All expenses and inconvenience thereof would be resolved by this compromise.

Paramount Interest of Creditors

It is the Chapter 7 Trustee's opinion that the Compromise is in the best interest of the estate and it is the debtor's opinion that his claim in the chapter 7 bankruptcy will probably go unpaid. The compromise makes sense from both bankruptcies.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. 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 Approve Compromise filed by Richard and Glorie Jones, the Chapter 13 Debtors, ("Movant") 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 Approve Compromise between Movant and Alan S. Fukishima,("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the exhibits accompanying this motion).

****

10. 15-28734-C-13 FELICIANO OZUNA
DPC-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-21-15 [16]

****

Final Ruling: No appearance at the January 26, 2016 hearing is required.

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 21, 2015. Fourteen days' notice is required. That requirement was met.

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.

The Chapter 13 Trustee has withdrawn his objection to confirmation.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan 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 Objection to the Chapter 13 Plan filed 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 the Objection is overruled, Debtor's Chapter 13 Plan filed on November 9, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

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

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11. 15-24143-C-13 MRL-1 | ROBERT/PHYLLIS DONNALLEY
Jeremy Heebner | OBJECTION TO CLAIM OF GALAXY INTERNATIONAL PURCHASING, LLC, CLAIM NUMBER 2
1-5-16 [29]

****

Tentative Ruling: The Objection to Claim 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 Claim.

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 January 5, 2016. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Claim 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. At the hearing **----------**.

The Objection to Proof of Claim Number 2 of Galaxy International Purchasing, LLC is overruled.

Debtors ("Objector") request that the court disallow the claim of Galaxy International Purchasing, LLC ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $35,419.47. Objector asserts that

Legal Standard

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).

Discussion

Federal Rule of Bankruptcy Procedure 3001 provides that if a claim is based on writing, a copy of the writing shall be filed with the proof of claim.

Objectors do not contend that Creditor has not provided prima facie validity of a proof of claim. The student loan claim at issue was based on writings and copies of said writings were filed with the proof of claim. Rather, Objectors contend that the writings evidencing the proof of claim are hearsay and must be authenticated under the business records exception to hearsay. Nothing in Rule 3001 requires authentication under the business records exception to qualify as prima facie evidence of a claim.

Since Creditor has provided prima facie evidence of its claim, Objectors have the burden of presenting a substantial factual basis to overcome the prima facie validity of a proof of claim, and evidence must be of probative force equal to that of the creditor's proof of claim.

Objectors have offered a bare objection to the proof of claim and have not presented any evidence. Accordingly, Objectors have not met their burden of presenting a substantial factual basis to overcome to overcome the prima facie validity of the proof of claim.

Based on the evidence before the court, the creditor's claim is allowed. The Objection to the Proof of Claim 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 Claim of Galaxy International Purchasing, LLC, Creditor filed in this case by Debtors 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 2 of Galaxy International Purchasing, LLC is overruled.

****

12. 12-25750-C-13 JOHNNIE/ROBBIE ARNOLD — MOTION TO APPROVE NOMINATION OF DEBTORS' REPRESENTATIVE
CK-11 Catherine King — 12-16-15 [146]

****

Final Ruling: No appearance at the January 26, 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 December 16, 2015. 28 days' notice is required. This requirement was met.

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). 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 Substitute is granted.

Joint Debtor, Robbie Jean Arnold, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Johnnie Warren Arnold. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on March 23, 2012. On August 23, 2015, Debtor Johnnie Warren Arnold passed away. The Joint Debtor asserts that she 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 November 5, 2015. Dckt. 136. Joint Debtor is the wife of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

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.

Here, Robbie Jean Arnold has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 136. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Robbie Jean Arnold, as the surviving spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Johnnie Warren Arnold. The court grants the Motion to Substitute Party.

Chapter 13 Trustee, David Cusick, filed a response on January 5, 2016 stating that while he does not oppose the motion, Trustee files this response to highlight that the motion does not prevent the confirmed plan from being modified should Trustee or Debtor's representative seek to do so.

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 granted and Robbie Jean Arnold is substituted as the successor-in-interest to Johnnie Warren Arnold and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

****

13. 15-28050-C-13 CINDY WILLIAMS — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Michael Hays — 12-16-15 [24]
Also #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. Fourteen days' notice is required. This requirement was met.

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.

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

1. Debtor did not appear at the first meeting of creditors on December 10, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

2. Debtor cannot make payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of One Main Financial on a 2004 Chevy Impala, but has failed to file a Motion to Value Collateral to date.

Debtor's Opposition

Debtor states that she did not appear at the first meeting of creditors due

to the fact that she depended on her husband to drive her and he recently passed. Debtor is learning how to drive but go nervous at the last minute contemplating the drive to Redding.

Debtor plans to have a motion to value calendared for the hearing on January 26, 2016.

Discussion

Debtor has filed a Motion to Value Collateral of One Main Financial, which the court has granted. (See matter below). Accordingly, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan 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 Objection to the Chapter 13 Plan filed 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 the Objection is overruled, Debtor's Chapter 13 Plan filed on October 15, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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14. 15-28050-C-13 CINDY WILLIAMS — MOTION TO VALUE COLLATERAL OF ONE MAIN FINANCIAL GROUP, LLC
MOH-1 Michael Hays — 1-11-16 [32]

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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 One Main Financial Group, LLC, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 11, 2016. Fourteen days' notice is required. That requirement was met.

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 One Main Financial Group, LLC, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2004 Chevrolet Impala. The Debtor seeks to value the property at a replacement value of $4,386.00 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 vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately $10,795.00. Therefore, the respondent 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 $4,386.00. *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 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of One Main Financial Group, LLC secured by a purchase-money loan recorded against a 2004 Chevrolet Impala is determined to be a secured claim in the amount of $4,386.00, and the balance of the claim is a general unsecured claim. The value of the vehicle is $4,386.00.

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15. 15-26854-C-13 ANTHONY SIPPIO MOTION TO CONFIRM PLAN
HLG-4 Kristy Hernandez 12-3-15 [41]

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Final Ruling: No appearance at the January 26, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2016. Forty-two days' notice is required. That requirement was met.

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.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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 September 24, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

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

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16. 15-29358-C-13 THOMAS/GINA FALES — MOTION TO VALUE COLLATERAL OF
NBC-1 Eamonn Foster — OCWEN LOAN SERVICING, LLC
12-11-15 [14]

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Final Ruling: No appearance at the January 26, 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, respondent creditor, and Office of the United States Trustee on December 11, 2015. Twenty-eight days' notice is required. That requirement was met.

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 is removed from calendar.

Parties to the instant motion filed a stipulation with the court on January 12, 2016 resolving the underlying basis for this motion, Dckt. 21. On January 12, 2016, the court approved said stipulation to resolve this motion to value real property. Dckt. 22.

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 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 removed from calendar, having been resolve dby court order approving stipulation.

****

17. 15-28562-C-13 ELMER/ALMA CRESPIN — MOTION TO VALUE COLLATERAL OF LONG BEACH MORTGAGE
PGM-2 Peter Macaluso — 12-29-15 [28]

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Final Ruling: No appearance at the January 26, 2016 hearing 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).

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 Chapter 13 Trustee, the incorrect respondent creditor, and Office of the United States Trustee on December 29, 2015.

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). The defaults of the non-rsrespondent 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 is continued to March 22, 2016 at 2:00 p.m.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1855 Griffin Drive, Vallejo, California. The Debtors seeks to value the property at a fair market value of $200,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $3221,896.68. The second deed of trust, which Debtors assert in their motion is held by Long Beach Mortgage serviced by Madison Management Servicing, LLC, secures a loan with a balance of approximately $70,045.33. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

Brio Ventures, LLC, Creditor, responds to Debtors' motion asserting rights, title, and interest in the second deed of trust, the subject of the instant motion. Creditor states that the second deed of trust was transferred from Long Beach Mortgage Company to Mortgage Electronic Registration Systems, Inc., by way of assignment of deed of trust. Thereafter, all rights, title, and interest in the note and deed of trust was transferred from Mortgage Electronic Registration Systems, Inc. to Trinity Financial Services, LLC. Thereafter, all rights, title, and interest in the note and deed of trust was transferred from Trinity Financial, LLC to Brio Ventures, LLC by assignment of deed of trust.

Creditor objects that Long Beach Mortgage, who no longer holds the second position mortgage, was the named entity in the motion. Creditor states that as such, the motion should be denied. Next, Creditor requests that as the actual holder of the deed of trust in question, a 45 day continuance to allow Creditor to conduct a full appraisal of the property.

DEBTORS' RESPONSE

Debtor responds, stating that in filing their opposition, Brio Venturs, LLC, has opted to waive any contention of insufficient service, and state no opposition to continuing this matter to allow Creditor an opportunity to obtain an appraisal.

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 Value Collateral filed by Debtors, 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 continued to March 22, 2016 at 2:00 p.m.

****

18. 15-28864-C-13 ROBERT/PATRICIA KERSEY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Kristy Hernandez — 12-21-15 [21]

****

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 21, 2015. Fourteen days' notice is required. That requirement was met.

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.

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

1. Debtors cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a motion to value the collateral of EOS CCA, set for hearing January 12, 2016.

2. Debtor does not appear to be able to make payments required under 11 U.S.C. § 1325(a)(6). Debtor did not list any payroll deductions on Schedule I, although Debtor's pay advices from City of Vacaville show deductions of approximately $600 per month.

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 Chapter 13 Trustee, David Cusick, 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.

****

19. 15-27368-C-13 ELIZABETH DENNIS-BELL MOTION TO CONFIRM PLAN
MRL-1 Mikalah Liviakis 11-30-15 [20]

****

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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 30, 2015. Forty-two days' notice is required. That requirement was met.

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 Plan.

CREDITOR OPPOSITION

Creditor, the Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-backed Certificates, Series 2006-20, opposes the Motion to Confirm Plan on the basis that:

1. At the time of filing this petition, Creditor's claim was in the approximate amount of $534,287.16 including arrearage in the amount of $250,838.40. Creditor's claim is secured by real property commonly known as 8748 Gessner Drive, Elk Grove, California. Creditor is in the process of preparing its proof of claim and will file it on or before the hearing date set forth above.

2. The plan does not provide for curing the default on Creditor's claim. Debtor is attempting to obtain a loan modification according to the plan with Creditor Specialized Loan Servicing. Counsel for Secured Creditor verified the parties were working on the loan modification application process. However, the application was incomplete and Debtor was informed in a letter November 30, 2015 that no loan modification application would be evaluated or reviewed. Counsel for Creditor has further verified that there is no currently active

modification pending with regard to Debtor. Debtor should fully provide for Creditor's claim including arrearages in the amount of $250,838.40.

3. The plan does not provide how Debtor will be able to make all payments under the plan or comply with the plan. Debtor proposes to pay $299 per month for 60 months, however Debtor has a net monthly income of only $299. This amount will be insufficient to fund the plan and is infeasible once the arrears on Creditor's claim is fully provided for.

CHAPTER 13 TRUSTEE OPPOSITION

Chapter 13 Trustee, David Cusick, opposes the instant motion on the basis that:

1. Debtor is $207 delinquent in plan payments to the Trustee to date and the next scheduled payment of $299 is due January 25, 2015. Debtor has paid $690 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).

2. Debtor cannot make payments under the plan or comply with the plan./ Debtor is attempting to modify a debt secured solely by Debtor's primary residence, which is not permissible under 11 U.S.C. § 1322(b). No timeline to obtain a loan modification is provided.

3. The Motion to Confirm may not comply with the requirements of Fed. R. Bankr. P. 9013 because it does not plead with particularly the grounds upon which relief is requested.

The Plan complies does not comply with 11 U.S.C. §§ 1322 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.

****

20. 12-25070-C-13 JOSEPH MUNOZ — MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
SDB-3 W. Scott de Bie 12-21-15 [38]
Thru #22

****

Final Ruling: No appearance at the January 26, 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, respondent creditors, and Office of the United States Trustee on December 21, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien 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 to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Capital One Bank (USA), N.A. for the sum of $2,443.77. The abstract of judgment was recorded with Solano County on October 13, 2011. That lien attached to the Debtor's residential real property commonly known as 536 Countryside Drive, Vacaville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $405,000 as of the date of the petition. The unavoidable consensual liens exceed $476,474.80 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) of at least $100 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Quality Moving Services, Inc., Solano County Superior Court Case No. FCS037221, Document No. 201100039125, recorded on May 4, 2011, with the Solano County Recorder, against the real property commonly known 536 Countryside Drive, Vacaville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

****

21. 12-25070-C-13 JOSEPH MUNOZ — MOTION TO AVOID LIEN OF POSER INVESTMENTS, INC.
SDB-4 W. Scott de Bie — 12-21-15 [43]

****

Final Ruling: No appearance at the January 26, 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, respondent creditors, and Office of the United States Trustee on December 21, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien 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 to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Poser Investments, Inc. for the sum of $6,397.89. The abstract of judgment was recorded with Solano County on February 1, 2011. That lien attached to the Debtor's residential real property commonly known as 536 Countryside Drive, Vacaville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $405,000 as of the date of the petition. The unavoidable consensual liens exceed $476,474.80 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) of at least $100 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Poser Investments, Inc., Solano County Superior Court Case No. FCM115345, Document No. 201100010315, recorded on February 1, 2011, with the Solano County Recorder, against the real property commonly known 536 Countryside Drive, Vacaville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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22. 12-25070-C-13 JOSEPH MUNOZ — MOTION TO AVOID LIEN OF LYON FINANCIAL SERVICES
SDB-5 W. Scott de Bie — 12-21-15 [50]

****

Final Ruling: No appearance at the January 26, 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, respondent creditors, and Office of the United States Trustee on December 21, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien 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 to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Lyon Financial Services, Inc. for the sum of $44,881.36. The abstract of judgment was recorded with Solano County on May 4, 2011. That lien attached to the Debtor's residential real property commonly known as 536 Countryside Drive, Vacaville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $405,000 as of the date of the petition. The unavoidable consensual liens exceed $476,474.80 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) of at least $100 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Quality Moving Services, Inc., Solano County Superior Court Case No. FCS037221, Document No. 201100039125, recorded on May 4, 2011, with the Solano County Recorder, against the real property commonly known 536 Countryside Drive, Vacaville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

****

23. 15-25370-C-13 KEENAN REED
DPC-2 Paul Bains

OBJECTION TO CLAIM OF SOLANO GATEWAY MEDICAL GROUP, CLAIM NUMBER 6-1
11-20-15 [29]

****

Final Ruling: No appearance at the January 26, 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, parties requesting special notice, and Office of the United States Trustee on November 20, 2015. 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). That requirement was met.

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 6-1 of Solano Gateway Medical Group is overruled.

Chapter 13 Trustee, David Cusick, ("Objector") requests that the court disallow the claim of Solano Gateway Medical Group ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $727.40. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). Debtor asserts that the deadline for filing proofs of claim in this case is November 11, 2015, and the claim in question was late-filed on November 12, 2015.

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).

Chapter 13 Trustee asserts that the deadline for filing proofs of claim in this case is November 11, 2015, and that Creditor here filed the proof of claim 6-1 on November 12, 2015, and as such, the claim should be disallowed because it was untimely. However, Notice of Bankruptcy Filing and Deadlines, Dckt. 13, 15, reflects the in fact, the deadline to file a proof of claim for a non-governmental unit was November 12, 2015.

Chapter 13 Trustee's basis for objection, being incorrect and thus unable to substantiate this 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 Claim of Solano Gateway Medical Group, Creditor filed in this case by Chapter 13 Trustee, David Cusick, 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 6-1 of Solano Gateway Medical Group is overruled and the claim is allowed.

****

24.	14-27476-C-13	EDUARDO/MARIE ORTEGA	CONTINUED MOTION FOR
	CA-4	Michael Croddy	COMPENSATION FOR MICHAEL D.
Also #25			CRODDY, DEBTORS' ATTORNEY
			11-3-15 [219]

Tentative Ruling: The Motion for Allowance of Professional Fees 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, creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

The Motion for Allowance of Professional Fees 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.

The hearing on the Motion for Allowance of Professional Fees is . . .

Michael Croddy, the Attorney for Debtors, ("Applicant") for Eduardo and Marie Ortega, ("Clients"), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 2014 through present. Applicant requests the amount of $18,225 in additional fees and $973.04 in costs. Counsel has previously received a $1,750 retainer and $310 for the filing fee, and here requests $17,138.04 in additional compensation.

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 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. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant received a retainer in the amount of $1,750 at the outset of the case.

This motion seeks in additional fees $17,138.04 for services related to: meeting with clients (4.90 hours); data acquisition and input (10.30 hours); 341 meeting of creditors (1.90 hours); motion to dismiss (18.20 hours); motion to confirm first amended chapter 13 plan (4.10 hours); motion to confirm second amended plan (7.30 hours); and motion for attorneys fees (0 hours).

The hourly rate here charged for services of the senior attorney is $375. The total number of hours expended in this case for which the applicant seeks compensation is 48.6 hours.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee, David Cusick, responds to this motion stating Trustee has a balance on hand of $15,000. Debtors have paid in a total of $47,984.48 and $32,984.48 of those funds were previously disbursed to secured claims and Trustee fees under the confirmed plan. On or about October 29, 2015, Trustee received a Notice of Levy from Creditor Robert Guerra requesting the funds held by the Trustee.

PREVIOUSLY

The court originally heard this motion on November 24, 2015. The court noted that this bankruptcy case was dismissed on September 24, 2015. Order, Dckt. 215. On October 29, 2015, the Trustee reports that Creditor Robert Guerra served a notice of levy on the Trustee, seeking to recover the Debtor's interests in the monies. The Notice of Levy states that the property levied upon

At the hearing the parties addressed additional issues of whether the dismissal of the case precluded the court from ordering allowed fees to be paid from the monies held by the Trustee; whether Creditor's lien has attached to the proceeds, whether 11 U.S.C. § 349(c) would "revest" post-petition earnings of the Debtor in the Debtor, whether 11 U.S.C. § 1326(a)(2) was applicable to post-petition earnings of the Debtor held by the Trustee for claims allowed

pursuant to 11 U.S.C. § 503(b), and whether federal law pursuant to 11 U.S.C. § 1326(a)(2) preempts state judgment lien law.

The court established a briefing schedule.

APPLICANT'S SUPPLEMENTAL BRIEF

On December 11, 2015, Applicant submitted a supplemental brief addressing the grounds upon which it is asserted that the monies held by Trustee may be used to pay attorneys' fees allowed applicant in priority to the lien rights asserted by Creditor.

Applicant asserts that the issue of creditor's judgment lien vs. counsel's administrative claim is misplaced, as it presumes that no administrative claim to the monies was made prior to the case being dismissed-an Ortega Request. On September 24, 2015, the case was dismissed. Prior to dismissal, on September 22, 2015, Debtor's counsel present orally and on the record an informal claim for administrative expenses, "in the neighborhood of about $15,000." Exhibit A, Dckt. 239. At that hearing, parties discussed how to fashion such a remedy by having the Trustee hold on to the monies. Id. Applicant points out that there appears no disagreement as to the actual amount of the fees requested.

Applicant raises two lines of cases supporting opposite positions. The first support the proposition that in the event of the dismissal of a case, the monies are returned directly to Debtor regardless of Creditor's lien.

The second supports the proposition that the lien creditor is paid the net return to the Debtor after deducting the administrative claim. In re Tran, 309 B.R. 330, 337 (9th Cir. BAP 2004). This line of cases, however, Creditor asserts is distinguishable from the instant case. First, Applicant asserts BAP cases are not binding upon this court. Second, Creditor asserts that this case involves an Ortega request.

Applicant asserts that here where the subject is an Ortega Request, or an "informal claim" made to the court before dismissal, the court should give priority to an applicant over a judgment creditor.

CREDITOR'S SUPPLEMENTAL RESPONSE

Creditor Robert Guerra responds to Applicant's supplemental brief. Creditor asserts that Applicant fails to substantively address the issues discussed by the court on November 24, 2015, and willfully ignores controlling U.S. Supreme Court (Harris v. Viegelahn, 135 S.Ct. 1829 (2015)) and Ninth Circuit (In re Tran, 309 B.R. 330, 337 (9th Cir. BAP 2004), aff'd 177 Fed. Appx. 754 (9th Cir. 2006) authority, and that post-petition wages held by Trustee must be ordered paid to Creditor because such funds would otherwise have to be released to Debtor as a matter of law, but Creditor has properly levied such funds pursuant to his judgment under California law under FRCP 69.

Creditor disparages Applicant's reliance upon "East Coast cases," stating that they are in direct contradiction to Ninth Circuit law, which directs that where a chapter 13 case has been dismissed post-confirmation, funds held by the chapter 13 trustee must be paid to the debtor and are not to be paid to administrative claimants. Creditor asserts that Applicant's insistence that the oral request made at the November 24, 2015 hearing is nonsensical, and should not render applicable case law irrelevant.

TRUSTEE'S SUPPLEMENTAL BRIEF

Chapter 13 Trustee David P. Cusick filed a supplemental brief regarding the instant motion for compensation. Trustee asserts that Harris v. Viegelahn, 135 S. Ct. 1829 (2015), is controlling in a case of conversion a chapter 7. The instant case involves dismissal of a case, not conversion. As such, the implicated bankruptcy code provision is 11 U.S.C. § 349 (Effect of dismissal), providing that the effect of dismissal is to "revest the property of the estate in the entity in which the property was vested immediately before the commencement of the case," not 11 U.S.C. § 348 (Effect of conversion) is applicable.

Trustee further provides that Ninth Circuit authority permits that a debtor's refund may be levied upon, at least by the IRS. In re Beam, 192 F.3d 941 (9th Cir. 1999); see also In re Harris, 258 B.R. 912 (Bankr. ID. 2000) (creditor can assert a state law levy).

Trustee points out the applicability of 11 U.S.C. § 1326 is here strained; 11 U.S.C. § 1326 provides that if a plan is confirmed, "the trustee shall distribute any such payment in accordance with the plan as soon as it is practicable." If a plan is not confirmed, "the trustee shall return any suchn payments not previouisly paid and not yet due and owing to any creditors . . . to the debtor, ..." However here, the plan was confirmed and thus 11 U.S.C. § 1326 may not apply unless ordered pursuant to 11 U.S.C. § 349, or if the Order Confirming is vacated.

However, the Order Confirming has not been vacated, and 11 U.S.C. § 349 does not specifically vacate the order confirming. Ninth Circuit law suggests that a debtor is not bound by a confirmed plan after dismissal, and that the order confirming is no longer in force and the dismissal effectively vacates the order confirming. In re Nash, 765 F.2d 1410 (9th Cir. 1985). Case law further suggests that it is possible that cause may justify that the court may order that funds be distributed to other than to debtor. In re Tran, 309 B.R. 330 (9th Cir. BAP 2004).

Trustee does not believe that the Order Confirming was vacated, and argues that 11 U.S.C. § 349 is the controlling statute for distribution. As such, the court may for cause change where the property of the estate revests, effectively allowing the court to issue orders directing where funds held by Trustee are distributed.

DISCUSSION

The court will render its decision upon hearing the oral argument of the parties at hearing on January 26, 2016.

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 Michael Croddy ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, the asserted lien rights interposed by Robert Guerra ("Creditor"), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Compensation is . . . .

*****

25. 14-27476-C-13 EDUARDO/MARIE ORTEGA — CONTINUED MOTION THAT THE MONIES HELD BY THE TRUSTEE CAN BE USED TO PAY ATTORNEY'S FEES ALLOWED APPLICANT IN PRIORITY TO THE LIEN RIGHTS ASSERTED BY CREDITOR
CA-4 Michael Croddy — 12-11-15 [236]

****

Tentative Ruling: The Motion was 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 11, 2015. Fourteen days' notice is required. That requirement was met.

The Motion was 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 hear this motion in conjunction with #44 on the calendar, Motion for Allowance of Professional Fees.

The court will hear this motion in conjunction with the Continued Motion for Allowance of Fees, #44, as this briefed issue was ordered as a supplemental brief, Dckt. 234, and was incorrectly separately calendared.

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 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 instant Motion shall be heard in conjunction with #44 Continued Motion for Allowance of Professional Fees, as a supplemental brief to the continued matter.

****

26. 13-28691-C-13 LEIF LOWERY CONTINUED MOTION TO MODIFY PLAN
LBG-3 Lucas Garcia 10-23-15 [47]

****

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. Thirty-five days' notice is required. That requirement was met.

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 . . . .

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The additional provisions of Debtor's modified plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). The provisions call for the secured claim of Placer County Tax Collector to be paid with no payments to other secured claims until July 25, 2016. The additional provisions propose disbursements be suspended to all other creditors, including class 1 mortgage and arrears payments through month 35, and that Debtor's $6,350 monthly plan payment be divided between Trustee fees, Placer County, who will receive a dividend of not less than $5,267.61 and administrative expenses. Any remaining funds are to be paid to Placer County as well. Under both the confirmed and modified plan, California Bank and Trust, holding a second deed of trust on Debtor's residence, is provided for as a Class 1 claim with a monthly dividend of $300. Wells Fargo holding a first deed of trust on

Debtor's residence is provided for in Class 2 with a monthly dividend of $2,727.28 under the confirmed plan and $2,526.75 beginning month 36 in the proposed modified plan. Debtor has no equity in the residence according to the schedule A, and the modified plan does not provide for any kind of adequate protection payment to these creditors. Where Debtor intends to suspend disbursements, the additional provisions may not provide adequate notice to creditors.

2. Debtor's modified plan proposes to add Franchise Tax Board as a Class 5 priority creditor when the creditor filed a secured claim for $6,650.35 due to unfiled tax returns for tax years 2005 and 2006. Even if the claim is priority due to the unfiled returns, the creditors is entitled to interest where claimed security.

DEBTOR'S RESPONSE

On December 4, 2015, Debtor responded to Trustee's opposition. In her response, Debtor provides:

1. The additional provisions of the proposed modified plan still allow for the same total amount expected per creditor. The additional provisions change when the creditor will receive payment, not if the creditor will receive payment. The Debtor is proposing to distribute $5,267.60 of the $6,300 per month payment to Placer County Property Taxes and remainder will continue to pay trustees fees. Once Placer County Property Taxes and its mandated 18% interest have been paid in full then all creditors can receive expedited payment in full.

2. 100% of Debtor's general unsecured debt will be paid in full at an expedited rate. However, Creditors will stop receiving payment until Placer County property taxes, they will still receive payment in full and at a faster rate than stated in the previously confirmed plan.

3. Debtor apologizes for the oversight, and is providing fo the Franchise Tax Board claim in full.

DECEMBER 8, 2015 HEARING

At hearing on December 8, 2015, the court continued the hearing to 2:00 p..m. on January 26, 2016. The court ordered Debtor to file supplemental pleadings on or before December 28, 2015, and replies, if any, January 11, 2016.

DEBTOR'S SUPPLEMENTAL BRIEF

On December 23, 2015, Debtor filed a supplemental brief. Debtor provides the following language for the additional provisions:

1. Month 27 through Month 35 the proceeds of the monthly payment, approximately $5267.61, shall go to the Placer County Property Taxes.

2. It is an expedited rate since the original confirmed plan payment accounted. $2,722.93 of the plan payment went towards property taxes and court-ordered 18% interest rate. All $6,350.00 of the plan payment will go towards paying all creditors the same amount anticipated at a higher monthly dividend starting month 36.

3. Cal Bank and Trust shall receive $400.00 per month starting in month 36.

4. Wells Fargo shall receive $4000.00 per month starting in month 36.

5. Diamond Well Drilling shall receive $150.00 per month starting in month 36.

6. The State Franchise Tax Board shall receive $200.00 per month starting in month 36 as a Class 2 claim with 3% interest.

7. All remaining funds after distribution shall be distributed to remaining claims (including unsecured claims) in a pro rata manner.

TRUSTEE'S SUPPLEMENTAL OPPOSITION

Chapter 13 Trustee responds, supplementing his basis for opposition and providing that:

1. Debtor is $6,350 delinquent in plan payments to the Trustee to date. According to the terms of the modified plan, $190,500 has become due. Debtor has paid a total of $184,150 to Trustee with the last payment posted on December 4, 2015 in the amount of $6,350. Trustee notes that Debtor submits his payments to Trustee though TFS. A review of the TFS website reflects a payment fo $6,350 dated December 30, 2015 is processing but has not cleared the TFS system and at this point the funds are not guaranteed to arrive at Trustee's office, thought Trustee expects funds to clear within 5 business days.

2. The additional provision of the proposed modified plan call for the secured claim of Placer County Tax Collector to be paid with no payments to other secured claims until July 25, 2016.

   The additional provisions propose disbursement be suspended to all other creditors including Class 1 mortgage and arrears payments through month 35 (May 2016, although Debtor indicates month 35 is June 2016) and that Debtor's $6,240 monthly plan payments be divided between Trustee fees, Placer County, who will receive a dividend of not less than $5,267.61, and administrative expenses, with any remaining funds to be paid to Placer County.

   Debtor's supplemental response proposes payments of approximately $5,267.61 to be paid to Placer County Tax Collector in months 27 through 35, nine months total, with payments to other creditors beginning in month 36.

   Because a plan has been confirmed, Trustee is disbursing according to the confirmed plan. If the modified plan is approved, Trustee calculates payments to Placer County will not commence until February 2016, and will take approximately 7 months to pay in full which is beyond the 35th month as proposed.

Trustee requests Debtor clarify if payments to Placer County is to end in month 35 with payments to other creditors commencing month 36 or if Trustee is to commence payments upon confirmation of the modified plan solely to Placer County for 9 months, although Trustee calculates the claim will be paid in full in approximately 7 month.

Trustee notes that the plan suspends payments on the ongoing mortgage which may be contrary to 11 U.S.C. § 1322(b)(2), although payments will resume with higher monthly dividends and the plan remains feasible and will complete timely.

DISCUSSION

The court will resolve this matter upon hearing the oral arguments of the parties at hearing on January 26, 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 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 . . . .

****

27. 14-32092-C-13 NATHAN/MELANIE ROBINSON — OBJECTION TO CLAIM OF GALWAY FINANCIAL SERVICES, LLC, CLAIM NUMBER 24
DPC-3 Mary Ellen Terranella — 11-20-15 [56]

****

Final Ruling: No appearance at the January 26, 2015 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, parties requesting special notice, and Office of the United States Trustee on November 20, 2015. 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). That requirement was met.

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 24-1 of Galway Financial Services, LLC is sustained and the claim is disallowed in its entirety.

Chapter 13 Trustee, David Cusick, ("Objector") requests that the court disallow the claim of Galway Financial Services LLC ("Creditor"), Proof of Claim No. 24-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $600. 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 April 22, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 11.

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 April 22, 2015. The Creditor's Proof of Claim was filed November 2, 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 Galway Financial Services LLC, Creditor filed in this case by David Cusick, 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 24-1 of Galway Financial Services LLC is sustained and the claim is disallowed in its entirety.

****

28.	12-34299-C-13 PGM-3	BRIAN/CHERICE SHUMAKER Peter Macaluso	OBJECTION TO CLAIM OF U.S. DEPARTMENT OF HUD, CLAIM NUMBER 4 12-8-15 [91]

Tentative Ruling: The Objection to 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 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2015. 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). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 4 of U.S. Department of HUD is . . . .

Brian and Cherice Shumaker, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of U.S. Department of HUD ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $37,137.55. Objector asserts that the Claim is a duplicate of Proof of Claim Number 2.

The deadline for non-governmental creditors to file a proof of claim was December 15, 2012. The deadline for a governmental unit to file a proof of claim was January 29, 2013. The U.S. Department of HUD filed this proof of claim on August 28, 2014.

Objector states that on January 30, 2013, Debtors filed a first amended plan providing monthly mortgage payments of $855.95 to Freedom Mortgage as a

Class 4 Claim, Dckt. 38. On March 5, 2013, the court approved a loan modification of Debtors and Freedom Mortgage Corporation, "whose claim the plan provides for in Class 4." Dckts. 62 & 64. The court-approved loan modification and includes subordinate notes between Debtors and the U.S. Department of HUD, Exhibit 1, Dckt. 93. The first amended plan was confirmed April 21, 2013, Dckt. 65. Claim No. 4 is based upon the deed of trust and subordinate note from the U.S. Department of HUD, which were included in the approved loan modification.

Objector asserts that pursuant to the confirmed first amended plan, payments pursuant to the approve loan modification are being paid directly by Debtors as a Class 4 claim. As such, no disbursement of funds should be made by the Trustee to the U.S. Department of HUD for this claim.

The court will render its decision upon hearing the oral arguments of the parties.

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 U.S. Department of HUD, Creditor filed in this case by Brian Keith Shumaker and Cherice Marie Shumaker, Chapter 13 Debtors 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 4 of U.S. Department of HUD is . . . .

****

29. 15-23699-C-13 JEFFREY/JANETH JOHNSON — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Pro Se — 12-21-15 [63]

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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 21, 2015. Fourteen days' notice is required. This requirement was met.

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.

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).

2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

3. Debtor has not provided a dividend to unsecured creditors.

4. Debtor has not used the correct standard chapter 13 plan. Debtor

filed a "Southern District" plan on November 13, 2015, Dckt. 51.

5. Debtor's plan does not provide for the priority claim of the IRS in the amount of $10,026.49.

6. The Plan does not appear to be Debtor's best efforts under 11 U.S.C. § 1325(b0. Debtor is under the median income and proposes plan payments of $309 for 60 months and fails to provide a dividend to unsecured creditors. The Debtor lists an auto expense of $317 on schedule J, however th eplan does not provide for an auto in class 4.

7. Debtor did not appear at the first meeting of creditors on December 17, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

8. Debtor has not provided income from empl9oyement of operations of business on the statement of financial affairs.

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 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 confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

****