UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 26, 2016 at 3:00 p.m.

---

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

Tentative Ruling: The Objection to Confirmation 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)(2) Motion.

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

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to continue the Objection to 3:00 p.m. on March 16, 2016.

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

On December 29, 2015, the Debtor filed a Motion to Value Collateral of

the Creditor. Dckt. 24. The Motion is set for hearing on January 26, 2016 at 3:00 p.m.

At the hearing on January 12, 2016, due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection was continued to 3:00 p.m. on January 26, 2016.

At the hearing on January 26, 2016, the court continued the Motion to Value Collateral of the Creditor to 3:00 p.m. on March 16, 2016 to allow the parties the opportunity to gather appraisals on the collateral.

Due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection is continued to 3:00 p.m. on March 16, 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 Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is continued to 3:00 p.m. on March 16, 2016.

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

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

Tentative Ruling: The Objection to Confirmation 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.

The court's decision is to continue the hearing on the

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

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

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

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

At the hearing on January 12, 2016, due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection was continued to 3:00 p.m. on January 26, 2016.

At the hearing on January 26, 2016, the court continued the Motion to Value Collateral of the Creditor to 3:00 p.m. on March 16, 2016 to allow the parties the opportunity to gather appraisals on the collateral.

Due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection is continued to 3:00 p.m. on March 16, 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 Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is continued to 3:00 p.m. on March 16, 2016.

3. 15-28301-E-13 MET-1 — RICHARD/PAULA CUMMINGS — Mary Ellen Terranella — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. — 12-29-15 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on December 29, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") is continued to 3:00 p.m. on March 1, 2016.

The Motion filed by Richard and Paula Cummings ("Debtor") to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Toyota Avalon, VIN ending in 7407 ("Vehicle"). Debtor states that the Vehicle has been inoperable for over 2 years, that the vehicle is in need of repairs, and that the repairs are estimated to cost $5,000.00. Debtor seeks to value the Vehicle at a "rough trade-in value" of $11,950.00, based on a NADA Guide valuation.

CREDITOR'S OPPOSITION

Creditor filed an opposition to this motion on January 12, 2016 requesting an evidentiary hearing to determine the value of the Vehicle. Dckt. 29. Creditor objects to Debtor's valuation of the Vehicle, stating that Debtor did not provide proper foundation for the NADA Guide Price Report to be admitted as evidence. Creditor also objects to Debtor's use of the "rough trade-in value" because Debtor did not provide proper foundation to express an opinion as to the extent of repairs needed for the Vehicle. Creditor Further objects to Debtor's estimate of the cost of repair as inadmissable hearsay.

Creditor has provided a copy of the NADA Valuation Report and seeks to value the Vehicle at $15,550.00. Exhibit C, Dckt. 33. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

DEBTOR'S REPLY

On January 20, 2016, Debtor filed a reply and supplemental declaration. Dckt. 38. Debtor states that working as a truck driver for over 32 years has given him significant experience auto mechanics and repairs. Debtor further states that the Vehicle is in need of a new transmission and new rotors and pads for all four wheels, and that his estimate of repair cost was based thereupon.

DISCUSSION

Upon review of the record there are disputed material factual issues. A continuance of this motion will allow the additional time for the parties to obtain an appraisal and identify the correct valuation of the Vehicle. Rather than setting the Motion for an evidentiary hearing, the court finds that providing the opportunity to the parties to gather their own appraisals, especially based on the testimony of the Debtor as to the condition of the Vehicle, is beneficial.

Therefore, based on the fact that the Debtor and Creditor are disputing the valuation of the Vehicle, the court continues the instant Motion to 3:00 p.m. on March 15, 2016. Parties shall file and serve supplemental papers, including any appraisals, on or before February 23, 2016. Any opposition or

replies shall be filed and served on or before March 8, 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 for Valuation of Collateral filed by Richard and Paula Cummings ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the Motion is continued to 3:00 p.m. on March 15, 2016. Parties shall file and serve supplemental papers, including any appraisals, on or before February 23, 2016. Any opposition or replies shall be filed and served on or before March 8, 2016.

4. 15-28603-E-13 DPC-1 RICARDO SANCHEZ Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-21-15 [29]

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. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The court's decision is to sustain the Objection.

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

1. The Debtor failed to provide the Trustee with a tax transcript or a copy of his federal income tax return for the most recent pre-petition tax year.

2. The Debtor has failed to provide the Trustee with his non-filing spouse's pay advices.

3. The Debtor's plan fails to provide for American Honda Finance Corp (2011 Honda Crosstour) listed on Schedule D.

4. The Debtor appears to be unable to make plan payments because the Debtor failed to list the ongoing lease of Potter-Taylor & Co. in § 3.02 of the Plan In Schedule J.

5. The Debtor has failed to provide business documents including questionnaire, 6 months of bank statements, and profit and loss statements to the Trustee.

6. The plan does not provide all of the Debtor's projected disposable income because the plan does not increase when the retirement loan is repaid.

The Trustee's objections are well-taken.

The Debtor has not provided the Trustee with employer payment advices for the non-filing spouse the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

The Debtor has failed to timely provide the Trustee with business documents including: questionnaire, 6 months of bank statements, and profit and loss statements. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting questionnaire, 6 months of bank statements, and profit and loss statements, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

As to the Trustee's fourth objection, the court concurs with the Trustee that the Debtor does not appear to be able to make plan payments. A review of the plan and Schedules show that the Debtor lists in the plan the lease of Potter-Taylor & Co. However, the Debtor does not provide the lease payment on Schedule J. The court, the Trustee, nor parties in interest can determine if the plan is feasible when the Debtor's schedules and budget do not accurately reflect the Debtor's financial reality. Therefore, the objection is sustained.

Lastly, the Debtor does not provide any justification or explanation as to why the repayment of the retirement loan is necessary for the maintenance

and support of the Debtor or a dependent. The Debtor is over the median income. The Debtor's Schedule I shows a deduction of $500.00 for retirement loan. However, the Debtor does not provide any information as to when that loan would be repaid nor does the Debtor provide for a step up in plan payments when the loan is repaid. This is evidence that the instant plan is not the Debtor's best efforts. The objection is sustained.

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

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

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

5. 15-29404-E-13 TAEVONA MONTGOMERY
RJ-1 Richard L. Jare

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
1-12-16 [20]

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, Creditor, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The Motion to Value secured claim of The Bank of New York Mellon, Trustee as Successor of MERS, as Nominee for Countrywide Home Loans Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Taevona Montgomery ("Debtor") to value the secured claim of The Bank of New York Mellon, Trustee as Successor of MERS, as Nominee for Countrywide Home Loans Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known

as 131 Cedar Rock Circle, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $170,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $247,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $30,499.61. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil

Minutes for the hearing.

The Motion for Valuation of Collateral filed by Taevona Montgomery ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon, Trustee as Successor of MERS, as Nominee for Countrywide Home Loans Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 131 Cedar Rock Circle, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $170,000.00 and is encumbered by senior liens securing claims in the amount of $247,000.00, which exceed the value of the Property which is subject to Creditor's lien.

6. 12-21207-E-13 JIM LEDESMA — CONTINUED MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 10-30-15 [89]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Jim Ledesma ("Debtor") filed the instant Motion to Confirm the Modified Plan on October 30, 2015. Dckt. 89.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on November 23, 2015. Dckt. 103. The Trustee opposes on the following grounds:

1. Peter Macaluso, who filed the instant Motion on behalf of the Debtor, has not yet been substituted in as the Debtor's attorney. The Trustee opposes the Motion as the plan is ambiguous where it refers to "Debtor's attorney's fees" to be paid in the plan.

2. The Debtor's proposed plan indicates a 2.00% distribution to unsecured creditors while the Debtor's declaration indicates a 0.00% dividend. The confirmed plan has a distribution of 2.00% and the Trustee has disbursed 2.00% to date. The Trustee opposes the modification if it is attempting to reduce the amount to unsecured claims below what was previously paid.

3. Debtor does not provide an explanation as to why the proposed plan payment is for an amount that is less than his monthly net income or why the Debtor proposes to reduce the plan payment in month 53. Debtor proposes a plan payment of $79,945.61 total paid in through October 2015 (month 45), $2,675.00 for 7 months, then $2,425.00 for 8 months to complete the plan. The Debtor's supplemental Schedule J and J reflects a monthly net income of $2,765.84. Dckt. 96.

4. The Trustee is uncertain whether the Debtor has the ability to make the plan payments unless other people are paying for some of Debtor's expenses. The Debtor's declaration state that his expenses increased because the Debtor's son now lives with him full time. However, the Debtor's original Schedule J and the supplemental Schedule J indicates a reduction in expenses from $2,065.66 to $812.00. Debtor budgets $0.00 for electricity, heat, natural gas, water, sewer, and garbage collection. The Debtor's childcare expenses remain $0.00, food was reduced from $500.00 to $300.00, and clothing was reduced from $50.00 to $40.00. Additionally, the Trustee notes that the Debtor's supplemental Schedule I indicates that the Debtor now is employed by the State of California and receives income from rent or business which was previously not disclosed. The Debtor does not provide explanation of this additional income nor does the Debtor's Statement of Financial Affairs include business information.

DEBTOR'S REPLY

The Debtor, through Mr. Macaluso, filed a reply to the Trustee's opposition on November 30, 2015. Dckt. 106. The Debtor, through Mr. Macaluso, responds as follows:

1. The Debtor allegedly signed the substitution of counsel and that the order approving the substitution is pending court approval.

2. The percentage to unsecured claims was intended to remain 2.00%.

3. The reduction in expenses is due to the assistance of his new girlfriend who has afford to contribute $1,000.00 to the Debtor towards plan payments. The reply states that the contribution is for the next seven months. The assistance is based on expenses which are projected to increase by a total of $250.00 after seven months, to include further needs of the children.

DECEMBER 8, 2015 HEARING

At the hearing, the Counsel for Debtor reported that he has been ill, which has delayed his response. Dckt. 108. The court continued the hearing to January 26, 2016 at 3:00. The court ordered that any supplemental pleadings filed by Debtor shall be on or before January 8, 2016, reply if any filed by January 15, 2016.

SUPPLEMENTAL DECLARATION OF DEBTOR

On January 12, 2016, the Debtor filed a supplemental declaration. Dckt. 116. The Declaration states the following:

1. That since the filing of this case, the mother of my children died which has thrown my life into a mess.

2. Since then I have tried to rent my house to my daughter Dominique Parker and her family in which I am receiving $900.00 per month.

3. I have also moved into my girlfriend's home, Laurie Garcia whom has allowed me to basically live for free and provide $200 to allow my [sic] to make ends meet and keep my plan active.

4. The sudden changes with my ex-wife's death have made for these major changes so that I can complete my plan as intended.

DECLARATION OF LAURIE GARCIA

Laurie Garcia, the Debtor's girlfriend, filed a declaration on January 12, 2016. Dckt. 117. Ms. Garcia states the following:

1. I understand that my significant other is in a Chapter 13 bankruptcy case and which I am intending to help him for the balance of the plan.

2. That subject to this plan I am willing to provide a home free of charge and $200 to allow him to meet his needs and the requirements of the plan payments to the Chapter 13 Trustee.

3. That I can afford to make this payment each month for as long as the assistance is needed.

TRUSTEE'S SUPPLEMENTAL RESPONSE

The Trustee filed a supplemental response on January 13, 2016. Dckt. 111. The Trustee begins by stating that the Debtor failed to file any supplemental papers by the January 8, 2016 deadline.

The Trustee states that at the hearing on December 8, 2015, the Trustee was provided handwritten declarations from the Debtor and two identical handwritten declarations of Debtor's girlfriend, Laurie Green. The Debtor's Declaration states that the Debtor is now renting out his home to family and is moving in with his girlfriend where he will have no rent or utilities. Debtor states that there has been struggles since the death of his children's mother and his son is now with him full time. The Debtor's handwritten declaration indicates that there unexpected expenses such as dental expenses

and vehicle expenses.

The Trustee then addresses the status of his own objections in turn:

1. A substitution of attorney was filed on December 14, 2015 (Dckt. 109) and an order granting the substitution was entered December 18, 2015 (Dckt. 110). This resolves the Trustee's objection.

2. The Debtor's reply indicates that the percentage to unsecured creditors remains 2.00%.

3. The Debtor's reply as to the reduction in plan payment indicates that the Debtor's girlfriend is assisting the Debtor in making the plan payments for the next 7 months. The assistance is based on projected expenses which will increase by $250.00 due to needs of the children. The court found this explanation to be insufficient (Dckt. 108). Namely, the court was concerned that the Debtor did not file a declaration of the girlfriend regarding her willingness to contribute.

4. The Trustee remains uncertain if the Debtor can afford the plan payments. The Debtor's supplemental Schedule J indicates a reduction in expenses from $2,065.55 to $812.00. The supplemental Schedule J budgeted $0.00 for electricity, heat, natural gas, water, sewer and garbage. The Debtor budgeted $0.00 for education though the Debtor states that he now does actually have these costs. Additionally, the Debtor's food and clothing expenses went down, even though the Debtor now has his son living with him. Furthermore, the Debtor's medical and dental budget has remained $20.00 even though the Debtor states that his son has braces. The Debtor's supplemental declarations does not sufficiently address the changes in expenses, nor gives specifics as to the renting of his property to his sister.

DISCUSSION

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

First, Mr. Macaluso has been properly substituted in as the Debtor's counsel. Therefore, the Trustee's first objection is overruled.

However, the Trustee's remaining objections are still well-taken.

Even reviewing the reply filed by Mr. Macaluso although it was improper, the explanation as to the expense reduction and the supplemental assistance is insufficient to confirm the plan. The reply states that the Debtor's girlfriend has agreed to contribute to expenses during the next seven months. While the Debtor does provide the declaration of the "girlfriend" which states under penalty of perjury her willingness to contribute to the household, the budget still appears to be inaccurate. The Debtor admits to having expenses such as the Debtor's son's braces yet does not increase the Debtor's medical/dental budget. Even more, though, the reply admits that the expenses and the proposed plan is not an actual representation of the Debtor's financial reality.

Instead, it is a "hypothetical" budget that does not account for the contribution from the "girlfriend" but rather reduces expenses that the Debtor actually has and then having a step down in payments after the contribution ends. This financial "mirage" makes it impossible for the court to determine whether the plan is actually feasible.

Rather than providing this information at the time the Motion was filed, with accurate declarations and accurate supplemental budgets, Mr. Macaluso, filed a proposed plan premised on contribution from the girlfriend and the expected reduction in expenses. This is inappropriate.

The supplemental declarations filed by the Debtor and Debtor's girlfriend do not rectify these concerns. Rather, the Debtor appears to only address the willingness of his girlfriend to provide housing and additional funds to the Debtor. However, the Debtor still has not provided an accurate financial budget in order for the court, Trustee, and other interested parties to determine if the plan is feasible. The court will not confirm a plan that is based on rough estimates of the Debtor's finances. The Debtor's budget does not account for the girlfriend's contribution nor his daughter's rental of his property. These additional sources of income come to at least $1,000.00 a month that is not reported in the Debtor's schedules.

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

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

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

7. 15-26710-E-13 ROBERTO RAMIREZ **MOTION FOR CONTEMPT, MOTION FOR SANCTIONS**
Pro Se **12-30-15 [90]**

Tentative Ruling: The Motion for Contempt 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 Chapter 13 Trustee, State Court Defendant, parties requesting special notice, and Office of the United States Trustee on December 4, 2015. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

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

The Motion for Contempt is denied.

Roberto Ramirez ("Debtor") filed the instant Motion for Contempt on December 30, 2015. Dckt 90. The Debtor moves the court for an award of damages against Pacific Cycle Inc, Val Fisher, Bob Gonzalez, Cristi Moore and Schiff Hardin, LLP, attorneys, Lindsey Berg-James SBN 285109, Max G. Brittain, Carey-Davis Law and attorney Lisa-Carey Davis ("State Court Defendant") for contempt and sanctions for violations of the court's order and extreme and willful violation of the automatic stay and for order staying Debtor's pending civil suit in the Superior Court of Solano County, Case no. FCS044250 ("State Court Action").

The Debtor states that the instant case was filed on August 25, 2015. The Debtor asserts that the State Court Defendant received notice of the case since the Debtor listed them in the bankruptcy proceeding. The Debtor argues that despite receiving notice, State Court Defendant continued to contact Debtor by telephone and email in violation of the automatic stay.

The Debtor states that he filed a Notice of Stay in the State Court Action on September 2, 2015. The Debtor asserts that the Superior Court of Solano entered a Stop Action on September 11, 2015. However, the Debtor argues that State Court Defendant continued to demand payment from Debtor. The Debtor asserts that the State Court Defendant filed a Motion for Sanctions on August 21, 2015 in the State Court Action. On September 16, 2015, the Debtor asserts that the State Court Defendant again filed a Motion in the State Court Action for monetary compensation and demanding payment of pre-petition debt owed to State Court Defendant.

On August 26, 2015, Debtor filed a Motion to Extend the Automatic Stay. Dckt. 9. On August 28, 2015, the court denied the Motion. Dckt. 11. The Debtor filed a second Motion to Extend the Automatic Stay on September 24, 2015. Dckt. 33. On September 29, 2015, the court denied the Motion. Dckt. 42.

The Debtor requests that punitive damages against the State Court Defendant should not be less than $500,00.00. Additionally, the Debtor seeks for an order staying Debtor's State Court Action and for an order for permanent injunction against the State Court Defendant from attempting to collect the debt and from prosecuting the State Court Action.

STATE COURT DEFENDANT'S OPPOSITION

The State Court Defendant filed an opposition on January 12, 2016. Dckt. 95. The State Court Defendant states that the State Court Action was filed by the Debtor against the State Court Defendant for alleged discriminatory discharge from employment. The State Court Defendant states that the Debtor failed to comply with discovery requests in the State Court Action and that the State Court Defendant filed a Motion to Compel in the State Court Action. Four days later, the State Court Defendant states that the Debtor filed the instant bankruptcy Case. The State Court Defendant states that the only creditor listed in the Debtor's petition is Nationstar Mortgage.

The State Court Defendant states that on August 27, 2015, State Court Defendant's counsel sent a Notice of Deposition via email to the Debtor. The State Court Defendant states that it was not until September 14, 2015 that counsel received a Notice of Bankruptcy stay.

The State Court Defendant states that on September 15, 2015, the court dismissed Debtor's bankruptcy case for failure to file documents. Dckt. 22. The court vacated the order of dismiss on September 23, 2015. Dckt. 29. On September 16, 2015, the deadline for State Court Defendant to respond to Debtor's second amended complaint in the State Court Action. The State Court Defendant filed demurrers by the deadline, thinking that the bankruptcy case had been dismissed. Additionally, the State Court Defendant states that they filed a one page reply to the Motion to Compel in the State Court Action stating that the Debtor failed to timely respond and that the court should grant the State Court Defendant's motion.

The State Court Defendant states that on September 30, 2015, the automatic stay expired. The state court ordered that the Debtor respond to the discovery request and pay prior sanctions of $690.00 and an additional &770.00 to State Court Defendant. The State Court Defendant states that the court in the State Court Action dismissed the Debtor's case on December 28, 2015.

The State Court Defendant argues that they did not violate the automatic stay because the Debtor initiated the proceeding in the State Court Action and that, because the Debtor did not list State Court Defendant and did not advise of the stay during the time period, State Court Defendant was unaware of the stay's existence until September 14, 2015 which, byu that time, the case had already been dismissed.

The State Court Defendant asserts that the Debtor's failure to comply with the discovery order in the State Court Action and the subsequent order dismissing the action did not violate the Debtor's due process rights.

APPLICABLE LAW

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see also* 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings file with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or sua sponte by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situation.

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); *see also Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemptor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Filing a bankruptcy petition operates as a stay, applicable to all entities, of the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor. 11 U.S.C. 362(a)(1); In re Poule, 91 B.R. 83, 85 (B.A.P. 9th Cir. 1988). Courts have found that § 362 does not stay the hand of the trustee from continuing to prosecute a pre-bankruptcy lawsuit instituted by the debtor. In re Merrick, 175 B.R. 333, 337 (B.A.P. 9th Cir. 1994); see Merchants & Farmers Bank of Dumas v. Hill, 122 B.R. 539, 541 (E.D.Ark.1990) (collecting cases; debtors' counterclaim not stayed by § 362; only actions against debtor are stayed).

The Seventh Circuit succinctly addressed why the automatic stay does not apply to actions initiated by the debtor:

> [T]he automatic stay is inapplicable to suits by the bankrupt[.] This appears from the statutory language, which refers to actions against the debtor and to acts to obtain possession of or exercise control over property of the estate, and from the policy behind the statute, which is to protect the bankrupt's estate from being eaten away by creditors' lawsuits and seizures of property before the trustee has had a chance to marshal the estate's assets and distribute them equitably among the creditors. The fundamental purpose of the bankruptcy, from the creditors' standpoint, is to prevent creditors from trying to steal a march on each other and the automatic stay is essential to accomplishing this purpose. There is, in contrast, no policy of preventing persons whom the bankrupt has sued from protecting their legal rights. True, the bankrupt's cause of action is an asset of the estate; but as the defendant in the bankrupt's suit is not, by opposing that suit seeking to take possession of [that asset, it does not violate the automatic stay].

Martin–Trigona v. Champion Federal Sav. and Loan Association, 892 F.2d 575, 577 (7th Cir.1989) (internal quotations and citations omitted) (emphasis in original).

"Defenses, as opposed to counterclaims, do not violate the automatic stay because the stay does not seek to prevent defendants sued by a debtor from defending their legal rights[.]" *ACandS, Inc. v. Travelers Cas. and Sur. Co.*, 435 F.3d 252, 259 (3rd Cir.), cert. denied 547 U.S. 1159, 126 S.Ct. 2291, 164 L.Ed.2d 833 (2006). "This is true, even if the defendant's successful defense will result in the loss of an allegedly valuable claim asserted by the debtor." *In re Palmdale Hills Property, LLC*, 654 F.3d 868, 875 (9th Cir.2011); *In re Mosley*, 260 B.R. 590, 595 (Bankr. S.D. Ga. 2000) (in a chapter 13 case where the debtor is a party plaintiff, that debtor may continue suit).

DISCUSSION

Here, the Debtor has failed to provide any grounds as to how the State Court Defendant, through defending themselves in the State Court Action, violated the automatic stay.

Review of Evidence Presented By Debtor

Debtor fails to present any testimony authenticated evidence in support of the Motion. Fed. R. Evid. 601 et seq. and 901 et seq. The Motion makes general reference to:

> "Creditors continued to pursue and collect money sanctions in civil case FCS044250 Ramirez Pacific Cycle Inc et al.;"
>
> "On September 16, 2015, Creditors again filed a motion in civil case requesting monetary compensation and demanding payment of pre-petition debt owed to creditors.;"

> "Despite multiple notices to creditors and their attorneys, creditors again on September 23, 2015 filed a "Defendants' Reply and Notice of Non-opposition" in which they requested a total of $3,080 of debtor.;"
>
> "Attorney, LINDSEY BERG-JAMES of SCHIFF HARDING LLP (had filed a "Notice of Intent to appear by Telephone" on September 23, 2015), appeared for creditors, PACIFIC CYCLE INC, VAL FISHER, BOB GONZALEZ, CRISTI MOORE via telephone for the September 30, 2015 hearing. The Honorable Judge Michael Mattice of Department 10 presided. Creditors' attorney LINDSEY BERG-JAMES of SCHIFF HARDING LLP requested that the court rule for monetary sanctions.;"
>
> "LINDSEY BERG-JAMES demanded that sanctions be ordered against debtor.;" and
>
> "Creditors, PACIFIC CYCLE INC, VAL FISHER, BOB GONZALEZ, CRISTI MOORE, and creditors' attorneys, SCHIFF HARDING LLP, LINDSEY BERG-JAMES, MAX G. BRITTA1N, CAREY-DAVIS LAW, attorney, LISA CAREY-DAVIS continue to pursue pre-petition debt and use intimidation as means of collecting."

Motion, pp. 4-5; Dckt. 90.

It appears that the "pre-petition debt" which is the subject of Debtor's Motion are sanctions sought by State Court Defendant in the State Court Civil Action commenced by Debtor against State Court Defendant. Debtor does not identify any obligation which is the subject of an proceeding or commenced by State Court Defendant against Debtor.

Debtor does not provide copies of any of the pleading, emails, or other communication alleged in the Motion.

Ruling

As discussed supra, the provisions of § 362 and the automatic stay only stay "proceedings ***against*** the debtor." The Debtor admits that he initiated the State Court Action. While the Debtor's Motion alleges generic telephone and email communications by the State Court Defendant, the Debtor does not state with particularity how or when these communications came in. The Debtor merely states these alleged communications in passing without stating any relevant information as to how these alleged communications violated the automatic stay.

In opposing this Motion, State Court Defendant has not provided the court with any testimony. No declarations have been provided. However, Docket Entries 96-105 are various exhibits for which no witness is willing to attest to their authenticity (Fed. R. Evid. 901 et seq.) or which are self-authenticating documents, such as certified public records (Fed. R. Evid. 901 et seq.). While State Court Defendant has presented the court with copies of documents which purport to be pleadings filed in the State Court Action, these are not from the court's records and the court has no idea of whether such are true and accurate copies.

If the exhibits had been authenticated by a witness (such as an attorney who was involved in the litigation) or certified copies, then the court could rely on them as evidence of what is alleged. But the court will not assume that to be true in light of no witness being willing to so simply testify under penalty of perjury.

However, that does not prevent the court from ruling on the Motion as presented and prosecuted by Debtor. The Debtor's Motion concentrates on the actions taken by the State Court Defendant in the State Court Action. The Debtor operates under the assumption that the bankruptcy filing stayed the State Court Action and that the State Court Defendant's continued defense in the State Court Action, and the determination of sanctions in the State Court Action violates the automatic stay.

However, the State Court Action was initiated by the Debtor against the State Court Defendant. The State Court Defendant did not file any counterclaims against the Debtor. The State Court Defendant only was presenting defenses to the action brought by the Debtor against the State Court Defendant. The Debtor does not assert that State Court Defendant had any claims against the Debtor other than what may have arisen out of the Debtor's prosecution of the State Court Action against State Court Defendant. The Debtor appears to assert that the State Court Defendant filing a demurrer in the State Court Action and the Motion to Compel were violations of the automatic stay. However, courts have made it clear that in an action initiated by the Debtor against a third party is not "against the Debtor" for purposes of the automatic stay. Rather, the State Court Defendant, in order to defend their legal rights, filed the demurrer as a response, not as an action against the Debtor.

What Debtor has actually alleged is that when in the State Court Action the State Court judge was sanctioning Debtor for his conduct in that case, Debtor filed bankruptcy to erect a barrier to the State Court judge managing the Debtor's action against State Court Defendant and the conduct of the parties in the action Debtor commenced against State Court Defendant.

This is consistent with State Court Defendant's arguments of how the State Court Action proceeded. State Court Defendant directs the court to the Schedules in this bankruptcy case, in which the Debtor, under penalty of perjury states that he has no creditors with general unsecured claims. Dckt. 17 at 11. Further, Debtor under penalty of perjury states that his only pre-petition creditor is Nationstar Mortgage, which is listed on Schedule D. *Id.* at 17. This court's own files are evidence which may properly be considered in connection with the Motion.

On Schedule B Debtor does not list having any claims against State Court Defendant as assets as of the commencement of this case. *Id.* at 4-1. However, in response to Question 4 (Suits, etc.) of the Statement of Financial Affairs, Debtor does list a pending civil action, *Ramirez Lara v. Pacific Cycle*. *Id.* at 22. No ligation commenced by State Court Defendant against Debtor is listed in response to Question 4.

Debtor has filed four prior cases since 2011. Debtor does not list State Court Defendant has having any claims, or Debtor having any debt owing to State Court Defendant, in these four cases. 14-31766 (Dismissed), 14-25966 (Chapter 7 Discharge entered), 14-23403 (Dismissed), and 11-48165 (Dismissed).

The Chapter 7 case was commenced on June 4, 2014. 14-25966. On Schedule B Debtor did not list having any claims or rights against State Court Defendant as assets. *Id.* at 10-13. Debtor does not state in the Motion or Statement of Financial Affairs when his State Court Action against State Court Defendant was filed, but does state that the file number is FCS044250. A document identified as the State Court Complaint is filed as Exhibit A. Dckt. 96 at 2-41. That Document has an endorsement date of August 12, 2015. This is titled Second Amended Complaint. Paragraph 20 of this document contains an allegation that Debtor was terminated from the employment in August of 2012, and up to that time was discriminated against, harassed, and subjected to a hostile work environment. This August 2012 date is well before the June 4, 2014 commencement of Chapter 7 case no. 14-25966 in which Debtor received his discharge.

The Motion on its face fails to allege grounds upon which relief may be granted for the alleged violation of the automatic stay. Fed. R. Bank. P. 9013 requiring that the grounds upon which relief is requested must be stated with particularity. While long, the Motion is short on particularity of grounds. Further, to the extent grounds are alleged in the Motion, no evidence to support such grounds has been presented. The Debtor has failed to carry his burden of pleading, proof, and persuasion in this Contested Matter.

The court expressly no opinion as to whether the claims of the Debtor at issue could have been subject to the automatic stay, whether they are property of the estate, or whether Debtor is the proper party to assert any such rights for the claims asserted in the Complaint against State Court Defendant.

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 Contempt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied. This denial is without prejudice to the rights of any other person which may have any interests in the claims or rights which are the subject of State Court Complaint filed by Debtor.

8. 15-27111-E-13 DBL-2 EDWARD/SUSAN CARDOZA Bruce Charles Dwiggins

MOTION TO VALUE COLLATERAL OF HOUSEHOLD FINANCE CORPORATION 11-16-15 [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, Creditor, and Office of the United States Trustee on November 16, 2015. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Edward and Susan Cardoza ("Debtor") to value the secured claim of Household Finance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2156 Hope Lane, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $340,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent**

> **of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $355,343.00. Creditor's second deed of trust secures a claim with a balance of approximately $132,586.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Edward and Susan Cardoza ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Household Finance Corporation secured by a second in priority deed of trust recorded against the real property commonly known as 2156 Hope Lane, Redding, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $340,000.00 and is encumbered by senior liens securing claims in the amount of $355,343.00, which exceed the value of the Property which is subject to Creditor's lien.

9. 15-25819-E-13 ERICKA HOLLOWAY — MOTION TO MODIFY PLAN
MC-1 Muoi Chea — 12-19-15 [27]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Ericka Holloway ("Debtor") filed the instant Motion to Confirm the Modified Plan on December 19, 2015. Dckt. 27.

TRUSTEE'S LIMITED OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a limited opposition to the instant Motion on January 7, 2016. Dckt. 42. The Trustee states that Section 6.01 of Debtor's modified plan proposes administrative expenses be paid in full prior to any payments to Fay Servicing LLC for pre-petition mortgage arrears. Debtor states through December 13, 2015, the balance owed for administrative expenses is $3,268.85 and proposes monthly dividends of $233.00 for months 5 to 13, $271.00 for months 14 to 17, then 1 payment in month 18 of $87.85. Debtor proposes payments in an unspecified amount to Fay Servicing LLC beginning in month 19 until the total pre-petition mortgage arrears of $7,066.00 at 0.00% interest is paid in full.

The Trustee states that he would have no objection if the order confirming clarified the monthly dividend to Fay Servicing LLC beginning in month 19.

DEBTOR'S RESPONSE

The Debtor filed a response on January 8, 2016. Dckt. 45. The Debtor states that she has no objection to the order confirming correcting the treatment. The Debtor proposes the following amendments:

> Fay Servicing, LLC shall receive a monthly dividend of $271.00 from months 19 to 23 then $406.00 from months 24 to 37, and finally $27.00 on month 38 towards pre-petition arrears for the total amount of $7,066.00 at 0.00% interest.

DISCUSSION

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

While the Trustee's objection is well-taken, Debtor has proposed an amendment to address what appears to have been a mere scrivener's error. The proposed amendment will add clarification in the plan as to the treatment of Fay Servicing, LLC. The amendment proposed does not effect the overall treatment of the plan but just further specifies the treatment of the creditor.

Therefore, following the amendment in the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, providing for the following amendment
>
> > "Fay Servicing, LLC shall receive a monthly dividend of $271.00 from months 19 to 23 then $406.00 from months 24 to 37, and finally $27.00 on month 38 towards pre-petition arrears for the total amount of $7,066.00 at 0.00% interest;"
>
> transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

10. 15-26620-E-13 KEVIN/DEBRA JOHNSON — CONTINUED MOTION TO VALUE COLLATERAL OF NATIONWIDE ASSETS, LLC
BLG-1 Pauldeep Bains — 8-31-15 [13]

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

The court having previously granted the Motion to Value Collateral of Nationwide Assets, LLC, valuing the secured claim in the amount of $55,000.00 and the balance of the claim as general unsecured (Dckt. 54) pursuant to the stipulation of the Parties, **the Motion to Value is removed from the calendar.**

11. 15-25422-E-13 HAROLD/KIMBERLY BROWN — MOTION TO CONFIRM PLAN
BRO-2 Yasha Rahimzadeh — 12-9-15 [77]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Harold Brown Jr. and Kimberley Brown ("Debtor") filed the instant Motion to Confirm the Fifth Amended Plan on December 9, 2015. Dckt. 77.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 11, 2016. Dckt. 85. The Trustee opposes confirmation on the following grounds:

1. The Debtor is $3,968.17 delinquent in plan payments to date.

2. The Debtor's plan calls for payment of attorney fees of $1,750.00 but does not provide a monthly dividend in Section 2.07.

3. The Debtor appears to accelerate the payment of the secured creditors at the expense of the creditors holding general unsecured claims. The Debtor's class 2 claimants are receiving higher dividend than they would over the life of a 60 month plan while delaying payment to unsecured creditors.

DISCUSSION

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

The Trustee's objections are well-taken.

The basis for the Trustee's first objection is that the Debtor is $3,968.17 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The failure of the Debtor to provide for a proposed monthly dividend to the Debtor's counsel makes it impossible to determine whether the plan is feasible or viable. The Debtor's plan calls for payment of $1,750.00 in attorney's fees but does not provide a monthly dividend. Without a propose dividend, the court, nor any party in interest, cannot determine whether the plan is feasible. Therefore, the Trustee's objection is grounds to deny confirmation.

Lastly, the Debtor attempts to accelerate the payment of the secured claimants of Class 2 at the expense of the unsecured claims. The Debtor's plan provides for substantially more in monthly dividend than would be if the claim was amortized over the life of the plan. For instance the Debtor lists in Class 2 CarFinance with a balance of $20,946.00 and a monthly dividend of $1,209.41. If this was amortized over 60 months the dividend would be $300.18. The plan attempts to accelerate these payments but does not justify why or how this prejudicial treatment at the expense of the unsecured creditors is permissible.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

12. 15-28727-E-13 RONALD BROOKS **OBJECTION TO CONFIRMATION OF**
DPC-1 Pro Se **PLAN BY DAVID P. CUSICK**
12-21-15 [22]

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 (*pro se*) on December 21, 2015. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The court's decision is to sustain the Objection.

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

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

2. The Debtor's plan fails to provide for Travis Credit Union and Harley Davidson listed on Schedule D.

3. The Debtor's plan payment of $1,016.00 for 60 months is insufficient to pay the Class 1 on-going mortgage payment in

the amount of $1,850.00.

4. The Debtor's plan may not comply with the Code because the Debtor's plan proposes to pay interest on arrears to Chase Bank in Class 1, however, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e), unless the note provides for interest on late payment or other nonbankruptcy law.

5. The Debtor's plan does not pass the liquidation analysis because of non-exempt equity of $71,761.00 in the real property and the Plan fails to provide for distribution for the liquidation value for that non-exempt equity to creditors.

The Trustee's objections are well-taken.

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

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

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

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

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),

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

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

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

When a plan does not provide for a secured claim, the remedy is not

denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

As to the Trustee's third objection, the Trustee alleges that the Plan is not feasible, *See* 11 U.S.C. § 1325(a)(6). The proposed payments of $1,016.00 are insufficient to pay even the $1,850.00 monthly contract installment on the Class 1 claim. Thus, the plan may not be confirmed.

The Trustee's fourth objection is that the Debtor does not provide evidence that Chase Bank, a Class 1 claimant, is entitled to interest. Pursuant to 11 U.S.C. § 1322(e), unless the note provides for interest on late payments or applicable non-bankruptcy law requires it, that the creditor is not entitled to interest. The Debtor does not provide such justification. Therefore, the plan cannot be confirmed.

Lastly, the Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has non-exempt equity in the real property totaling $71,761.00.

The Debtor fails to propose a dividend to unsecured creditors when there is additional equity exists in the real property in the amount of $71,761.00. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to an undisclosed dividend when there may be upwards of $71,761.00 in non-exempt equity.

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

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

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

13. 15-28727-E-13 RONALD BROOKS **OBJECTION TO CONFIRMATION OF**
MDE-1 Pro Se **PLAN BY HARLEY-DAVIDSON**
CREDITOR CORP.
11-27-15 [18]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on November 27, 2015. By the court's calculation, 60 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing ----------.

The court's decision is to sustain the Objection.

Harley-Davidson Creditor Corp. ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtor's plan does not provide for the Creditor's claim.

2. The Debtor is improperly attempting to value the claim of the Creditor in violation of the hanging paragraph of 11 U.S.C. § 1325(a).

3. The Debtor does not provide how the Debtor will be able to make necessary payments because the Debtor is offering conflicting

budgets.

The Creditor's objections are well-taken.

The Creditor asserts a claim of $15,164.10 in this case.

The creditor first alleges that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the creditor's matured obligation, which is secured by the Debtor's residence.

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

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

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

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

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

Last, the Creditor asserts that the Plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), due to the Debtor not providing evidence that the plan is feasible given the Debtor's income. The Debtor's plan provides for monthly payments of $1,016.00 for 60 months. However, the Debtor only has a net income of $1,450.00 and there is additional installments not included in the plan that would need to be paid. The Debtor's budget does not seem to accurately reflect the Debtor's financial reality which makes determining feasibility and viability impossible.

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

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

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

14. 14-26329-E-13 HATTIE FERRETTI
DPC-3 Lucas B. Garcia

OBJECTION TO CLAIM OF OCWEN LOAN SERVICING LLC, CLAIM NUMBER 6
12-1-15 [55]

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, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 6-1 of Ocwen Loan Servicing LLC is sustained and the claim is disallowed as to the unsecured portion in the amount of $99,000.00.

The objection to Proof of Claim Number 6-1 of Western Progressive LLC is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Ocwen Loan Servicing LLC ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $236,000.00, unsecured in the amount of $99,000.00. Objector asserts that:

1. The claim as filed asserts an unsecured portion of $99,000.00 where the claim as scheduled appears solely secured by the Debtor's principal residence; and

2. The claim asserts a claim of an unknown amount on behalf of "Western Progressive LLC."

Proof of Claim No. 6-1 has been filed by the Debtor, with the proof of claim signed by Debtor's counsel. It actually consists of two proof of claim forms assembled into one document. There is no certificate of service attesting that the two claims were served on either of the purported creditors.

Objection to Ocwen Loan Servicing, LLC Claim

The Objector asserts that the Plan provides for the payment of the claim of Ocwen Loan Servicing for 11842 Tabeau Road, Pine Grove, California for $25,664.00 in arrears and a monthly contract installment amount of $1,096.00. The Debtor's petition discloses this as the Debtor's residence. While Debtor's Schedule D asserts that this claim is for $236,000.00 and does not disclose whether this is a first or second deed of trust, the Debtor had previously obtained an order that the other deed of trust on Schedule A has a secured claim valued at $0.00 where it is a second deed of trust. Dckt. 52.

The Objector asserts that the Debtor has no basis to assert that they can modify a debt secured solely by the Debtor's principal residence based on 11 U.S.C. § 1322(b)(2).

Objection to Western Progressive, LLC Claim

Additionally, the Objector states that if the Debtor is seeking to file a claim on behalf of "Western Progressive LLC," the Debtor needs to file a separate claim on their behalf. Here, the Debtor just attaches the claim of "Western Progressive LLC" to the Proof of Claim No. 6-1 of Ocwen Loan Servicing and does not provide any detail as to the claim. The Objector asserts that this claim should be disallowed.

DISCUSSION

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

Owen Loan Servicing, LLC Claim

The Objector's objections to the Ocwen Loan Servicing, LLC Claim are well-taken for the sake of clarity. When Debtor completed the proof of claim form, Debtor states the following:

A. Amount of Claim.....$236,000.00

1. Portion Which is Secured Claim.....$236,000.00

2. Portion Which is Unsecured Claim.....$ 99,000.00

B. Value of Collateral.....$137,000.00

C. Amount of Arrearage.....$25,774.00.

The Trustee asserts that this creates confusion as to whether a portion of the secured claim is rendered an unsecured claim in the amount of $99,000.00. The $99,000.00 is the difference between the $236,000.00 amount of claim and the $137,000.00 value of the collateral. But on its face, Proof of Claim No. 6 states that the secured portion of the claim is $236,000.00. In addition, it states that there is an additional $99,000.00 unsecured claim, which if true, would mean that the amount of the claim listed on line 1. of Proof of Claim No. 6 should be $335,000.00.

It appears that the Proof of Claim No. 6 form has been completed erroneously, with Debtor misstating that there is a $99,000.00 general unsecured claim in addition to the $236,000.00 secured claim. The Trustee is correct, without the consent of the creditor Debtor could not reduce the amount of this secured claim for which the Debtor's residence is the collateral. 11 U.S.C. § 1322(a)(b).

The Objection is sustained and the court disallows the $99,000.00 unsecured portion of Proof of Claim No. 6-1.

Claim of Western Progressive, LLC

As to the attached Proof of Claim of "Western Progressive LLC," the Proof of Claim form is left blank and is attached to the Proof of Claim No. 6-1 in what appears to be an accidental attachment. The Debtor did not fill out any information as to the type of claim or any amounts. Such blank proof of claim form is not permissible. If the Debtor wishes to actually file a claim on behalf of "Western Progressive LLC," the Debtor can properly file a separate Proof of Claim on their behalf, fully completing the form. Therefore, the Objector's objection is sustained and the claim of Western Progressive LLC is disallowed in its entirety without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Ocwen Loan Servicing LLC, Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 6-1 of Ocwen Loan Servicing LLC is sustained and the claim is disallowed as to the unsecured portion in the amount of $99,000.00.

IT IS FURTHER ORDERED that the objection to Proof of Claim Number 6-1 of Western Progressive LLC is sustained and the claim is disallowed in its entirety without prejudice to the filing of a further proof of claim by or for this creditor.

15. 16-20029-E-13 JAMES CHEUNG **MOTION TO EXTEND AUTOMATIC STAY**
FF-1 Gary Ray Fraley **1-7-16 [8]**

Tentative Ruling: The Motion to Extend Automatic Stay 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 Creditors, Chapter 13 Trustee, and Office of the United States Trustee on January 7, 2016. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is granted.

James Cheung ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-26377) was dismissed on December 2, 2015, after Debtor Failed to make plan payments and to provide proof of his

social security number to the trustee at the 341 Meeting of Creditors. *See* Order, Bankr. E.D. Cal. No. 15-26377, Dckt. 34, December 2, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtor was apparently not adequately advised by counsel of his duties under the Plan. Debtor further states that after being informed of the Trustee's Motions to Dismiss, he made payments to become current, but failed to inform counsel before the case was dismissed. Debtor states that he will better communicate with and inform counsel regarding payments due under the Plan.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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 Extend the Automatic Stay 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 and the

automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

16. 13-35536-E-13 GARY/AIMEE HOURCAILLOU MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso 12-11-15 [58]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Gary and Aimee Hourcaillou ("Debtor") filed the instant Motion to Confirm the Modified Plan on December 11, 2015. Dckt. 58.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 7, 2016. Dckt. 81. The Trustee opposes the instant Motion because the plan and budget provides for a high monthly deduction for the repayment of retirement fund loans. The currently confirmed plan provides for an increase in plan payments in month 52 of the plan due to the Debtor's payoff of a 401k loan. The increase was for $246.42. However, the Debtor's current budget indicates that a deduction of $258.35 which is an increase of $11.93 per month. The Trustee states that the he is uncertain is due to the Debtor taking out an additional loan without court authorization or why the Debtor is no longer proposing a step up.

SCHOOLS FINANCIAL CREDIT UNION'S OPPOSITION

Schools Financial Credit Union ("Creditor") filed an opposition on January 12, 2016. Dckt. 84. The Creditor asserts that the plan is not feasible

and that the plan is not filed in good faith.

The Creditor first asserts that the plan is not feasible because the proposed distributions, once including the fees and administrative costs, exceeds the plan payment. The Creditor also asserts that the Debtor have not provided current income and expense information that establishes their ability to make the increased plan payments, including the issue of the step up payment following the pay off of the 401k loan. The Creditor also argues that the plan relies on the Motion to Value Collateral of Community Wide Federal Credit Union which the Creditor asserts was not properly served.

Lastly, the Creditor asserts that the plan was not filed in good faith because the Debtor no longer proposes a step up plan payment, the Debtor fails to disclose two vehicles or how the Debtor obtained possession of such, the Debtor failed to provide proof of insurance, and the Debtor failed to provide evidence as to why the Debtor is paying the insurance premium of their 20 year old son when the plan proposes to pay 0% to unsecured creditors.

BANK OF AMERICA'S OPPOSITION

Bank of America, N.A. filed an opposition to the instant Motion on January 14, 2016. Dckt. 100. Bank of America, N.A. asserts that the plan attempts to impermissibly modify the senior claim against Debtor's principal residence. Here, the Debtor appears to be attempting to waive about three months of plan payments which adversely and impermissibly modifies Bank of America, N.A.'s claim. Bank of America, N.A. objects to such treatment.

DEBTOR'S REPLY

The Debtor filed a reply on January 19, 2016. Dckt. 105. The Debtor states that they will submit a second modified plan to address the opposition filed by the parties.

The court interprets this statement that Debtor acknowledges the issues with some of the objections and Debtor will file a second modified plan to be consent to the denial of this proposed First Modified Plan.

DISCUSSION

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

The objections are well-taken. As admitted by the Debtor in their reply, there are substantial issues with the proposed plan and the veracity of the Debtor's budget. The Debtor here is proposing to reduce the plan payments, getting rid of a step up in month 52 after the payment of the 401k loan. The Debtor provides no evidence or explanation as to why the step up is no longer offered. Furthermore, the Debtor does not address why the repayment of the loan as increased $11.93 and whether this was due to the Debtor taking out unauthorized additional funds.

Additionally, the Debtor's plan does appear to modify the claim of Bank of America, N.A. which is in violation of 11 U.S.C. § 1322(b)(2). Without the consent of the creditor or court order, such proposed treatment is not permitted.

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

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

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

17. 13-35536-E-13 GARY/AIMEE HOURCAILLOU
RTD-1 Peter G. Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-1-15 [32]

SCHOOLS FINANCIAL CREDIT UNION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay 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, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay 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 Motion for Relief From the Automatic Stay is granted.

Gary and Aimee ("Debtor") commenced this bankruptcy case on December 9, 2013. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Jeep Wrangler, VIN ending in 1391 (the "Vehicle"). The moving party has provided the Declaration of Robin Spitzer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spitzer Declaration provides testimony that Debtor has defaulted in post-petition payments totaling $1,091.21 through October 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $6,981.12, as stated in the Spitzer Declaration, while the value of the Vehicle as of December 2013, was $12,953.00, as stated in Schedules B and D filed by Debtor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on December 2, 2015. Dckt. 48. Trustee clarifies that Debtor has paid a total of $51,920.15 to date and is delinquent $8,304.70 under the confirmed plan. $2,899.22 has been disbursed regarding the 2004 Jeep Wrangler, with a remaining principal of $6,894.93. Dckt. 49.

DECEMBER 15, 2015 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on December 17, 2015 for the Debtor to provide proof of insurance.

DECEMBER 17, 2015 HEARING

At the December 17, 2015 hearing, the Parties confirmed that the insurance documentation has been provided to Movant. The court ordered that a final hearing on the Motion for Relief From the Automatic Stay shall be conducted at 3:00 p.m. on January 26, 2016. Opposition was ordered to be filed and served on or before January 5, 2016, and Replies, if any, filed and served on or before January 12, 2016.

SUPPLEMENTAL MEMORANDUM OF MOVANT

The Movant filed a supplemental memorandum on January 12, 2016. Dckt. 90. The Movant states that the Debtor did provide a copy of the insurance policy that was effective January 10, 2016. The Movant was able to verify that there was a current policy with collision and comprehensive insurance on both vehicles and that on December 3, 2015 the Movant has been added as a lienholder.. However, the Movant states that the premium due December 15, 2015 had not yet been paid but following the hearing found that the premium was paid on December 17, 2015. The Movant states that the Debtor made the plan payment due December 2015 and on November 30, 2015. The Movant asserts, though, that the Debtor is still in arrears for approximately 6 payments under the terms of the confirmed plan.

DISCUSSION

The Debtor has failed to file an opposition to the instant Motion.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the

debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Schools Financial Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Schools Financial Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2004 Jeep Wrangler, VIN ending in 1391 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

18. 13-35536-E-13 GARY/AIMEE HOURCAILLOU
RTD-2 Peter G. Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
12-1-15 [40]

SCHOOLS FINANCIAL CREDIT UNION VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay 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, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay 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 Motion for Relief From the Automatic Stay is granted

Gary and Aimee Hourcaillou ("Debtor") commenced this bankruptcy case on December 9, 2013. Schools Financial Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Chevrolet Tahoe, VIN ending in 1399 (the "Vehicle"). The moving party has provided the Declaration of Robin Spitzer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spitzer Declaration provides testimony that Debtor has defaulted in $2,186.72 of post-petition payments past due Movant through October 2015.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $14,050.55, as stated in the Spitzer Declaration, while the value of the Vehicle is determined to be $15,423.00, as stated in Schedules B and D filed by Debtor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on December 2, 2015. Dckt. 51. Trustee clarifies that Debtor has paid a total of $51,920.15 to date and is delinquent $8,304.70 under the confirmed plan. $5,813.58 has been disbursed regarding the 2007 Chevrolet Tahoe, with a remaining principal of $13,877.09. Dckt. 52.

DECEMBER 15, 2015 HEARING

At the hearing, the court continued the hearing to 10:30 a.m. on December 17, 2015 for the Debtor to provide proof of insurance.

DECEMBER 17, 2015 HEARING

At the December 17, 2015 hearing, the Parties confirmed that the insurance documentation has been provided to Movant. The court ordered that a final hearing on the Motion for Relief From the Automatic Stay shall be conducted at 3:00 p.m. on January 26, 2016. Opposition was ordered to be filed and served on or before January 5, 2016, and Replies, if any, filed and served on or before January 12, 2016.

SUPPLEMENTAL MEMORANDUM OF MOVANT

The Movant filed a supplemental memorandum on January 12, 2016. Dckt. 95. The Movant states that the Debtor did provide a copy of the insurance policy that was effective January 10, 2016. The Movant was able to verify that there was a current policy with collision and comprehensive insurance on both vehicles and that on December 3, 2015 the Movant has been added as a lienholder. However, the Movant states that the premium due December 15, 2015 had not yet been paid but following the hearing found that the premium was paid on December 17, 2015. The Movant states that the Debtor made the plan payment due December 2015 and on November 30, 2015. The Movant asserts, though, that the Debtor is still in arrears for approximately 6 payments under the terms of the confirmed plan.

DISCUSSION

The Debtor has failed to file an opposition to the instant Motion.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the

debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Schools Financial Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Schools Financial Credit Union ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2007 Chevrolet Tahoe, VIN ending in 1399 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> **IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

19. 11-21942-E-13 BASCOMB GRECIAN — MOTION TO INCUR DEBT
JSO-3 Jeffrey S. Ogilvie — 12-29-15 [61]

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, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to purchase the real property commonly known as 1727 Whistling Drive, Redding, California ("Property"), which the total purchase price is $207,178.00, with monthly payments of $1,396.46. The interest rate ill be 4.00%.

The Debtor is seeking to exercise their option to buy the Property based on their lease.

David Cusick, the Chapter 13 Trustee, filed a response on January 8, 2016. Dckt. 66. The Trustee states that he does not oppose the transaction which appears reasonable. The Trustee does state that the Debtor should update his address with the court, as it appears that the Debtor moved a year ago. Additionally, the Debtor needs to inform the Trustee when there is any change in employment.

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

must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The Debtor is in the last month of his plan and it appears that the Debtor makes a modest living. While the Debtor should have updated his schedules at the time of the move, the circumstances in this case shows that there is not a substantial change in the budget that would raise concerns over whether the current loan is reasonable. There being no opposition from any party in interest and the terms being reasonable, 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 Incur Debt 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 Bascomb Grecian ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit C, Dckt. 64.

20. 14-21142-E-13 LBG-201 THOMAS LISLE AND BARBARA TREAT Lucas B. Garcia

MOTION FOR COMPENSATION FOR WHITNEY DAVIS, SPECIAL COUNSEL 1-4-16 [160]

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 January 4, 2016. By the court's calculation, 22 days' notice was provided. 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. At the hearing ----------.

The Motion for Allowance of Professional Fees is granted.

Whitney Davis, the Special Counsel ("Applicant") for Thomas and Barbara Treat, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period October 25, 2012 through January 4, 2016. The order of the court approving employment

of Applicant was entered on March 7, 2015, Dckt. 117. Applicant requests fees in the amount of $193,008.00 and costs in the amount of $7,489.25. FN.1.

FN.1. The Motion requests a single sum in the amount of $199,497.25 be approved. However, the Declaration of Applicant indicates that the request is for $193,008.00 in fees and $7,489.25 in costs. Given that the amounts in the Declaration have support and are properly separated by fees and costs, the court sua sponte corrects the Motion to reflect those amounts.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on January 8, 2016.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including prosecuting a complaint for personal injury and loss of consortium on August 21, 2013 against Blackstar Paving, Chec Systems, and Lack of the Pines. The Applicant had to address vigorous defense based upon the contention that Debtor Thomas Lisle assumed the risk of falling from his bicycle. Extensive discovery was required. Furthermore, the subsequent death of the Debtor prior to entry of judgment created issues as to the pain and suffering claim. The Applicant made a motion to expedite the trial. The Applicant was able to secure a settlement in the total amount of $450,000.00. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation as to a personal injury and loss of consortium claim against Blackstar Paving, Chec Systems, and Lack of the Pines, for which Client agreed to a contingent fee of 40% of the gross. Additionally, the Applicant seeks 40% of the amount

the Applicant reduced in liens, totaling $13,008.00 In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). $227,003.00 of net monies (exclusive of these requested fees and costs) was recovered for Client.

The Applicant requests approval of $193,008.00 in fees.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $7,489.25 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
"K.W. Davis"		$7,489.25
Total Costs Requested in Application		$7,489.25

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the fees computed on a percentage basis recovery for Client to be reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of $193,008.00 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Applicant is authorized to pay Applicant from the available funds of the settlement funds in a manner consistent with the order of distribution of the settlement funds.

Costs and Expenses

Unfortunately, the Applicant does not provide evidence of the costs and what expenses were actually spent. The classification of "K.W. Davis" as costs in the amount of $7,489.25 does not provide a breakdown of the costs. Without this breakdown, the court cannot determine the reasonableness and necessity of the costs.

To disallow the costs pains the court, as the court could hypothesize costs in this amount. The court has carefully read the declarations, motion, and exhibits to see if the nature of the costs is disclosed therein. They are not.

Then the court reviewed prior documents filed in this case to see if

reference is made to the expenses incurred in the litigation and work done by Applicant to obtain the $450,000.00 settlement. The court first begins with the Civil Minutes for the hearing on the Motion to Approve the $450,000.00 settlement. Dckt. 140. No reference is made as to the nature of the expenses. The expenses are not stated in the Motion to Approve Compromise. Dckt. 130.

However, in the Declaration of Applicant in support of the Motion to Approve Compromise Applicant testifies to "Attorney/Expert Costs" for K.W. Davis in the amount of $7,489.25. It would not be shocking for there to be $7,489.25 in expert witness costs.

The court further notes that the Debtor's Chapter 13 Plan provides for a 100% dividend to creditors holding general unsecured claims. These expenses are being paid from the surplus of this estate that would otherwise go to Debtor. Debtor has affirmatively stated that Debtor agrees to the payment of these expenses to Applicant. Declaration, Dckt. 162.

Therefore, with the stated concurrence of Debtor and there being some evidence in the record relating to the Motion to Approve the Settlement that these expenses relate to expert costs, the court allows $7,489.25 of the requested costs.

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

Fees	$193,008.00
Costs and Expenses	$ 7,489.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Whitney Davis ("Applicant"), Special Counsel for 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 Whitney Davis is allowed the following fees and expenses as a professional of the Estate:
>
> Whitney Davis, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $193,008.00
> Expenses in the amount of $7,489.00,
>
> **IT IS FURTHER ORDERED** that the costs of $7,489.25 are not allowed by the court.
>
> The Fees and Costs pursuant to this Applicant are

approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Applicant is authorized to pay the fees allowed by this Order from the available funds of the settlement in a manner consistent with the order of distribution of the settlement funds.

21. 15-29147-E-13 JOHN QUIROZ
RK-1 Richard Kwun

MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
12-23-15 [14]

WITHDRAWN BY M.P.

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

John Quiroz, the Debtor, having filed a Withdrawal of the Motion for Sanctions for Violation of the Automatic Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Sanctions for Violation of the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**

22. 10-21448-E-13 RUFO/THELMA DELACRUZ — CONTINUED MOTION FOR CONTEMPT
RLC-2 Stephen M. Reynolds — 11-12-15 [165]

Tentative Ruling: The Motion for Civil Contempt 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 Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 14, 2016. By the court's calculation, 73 days' notice was provided. 28 days' notice is required.

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

The Motion for Civil Contempt is dismissed with prejudice.

Rufo and Thelma Delacruz ("Debtor") filed a Motion for Civil Contempt as to Ocwen Loan Servicing LLC ("Creditor"_ on November 12, 2015. Dckt. 165. The Debtor asserts that Creditor violated the discharge injunction by demanding and attempting to collect $9,458.64 for arrearages that were cured. The Debtor asserts that the Creditor has reported the alleged delinquency to credit reporting systems which has damaged the Debtor's rehabilitation attempts. Additionally, the Debtor states that they are receiving calls from the Creditor for payment.

STIPULATION

On November 20, 2015, the Debtor filed a stipulation between the Debtor and the Creditor. Dckt. 173. The Stipulation stated that Creditor requires additional time to prepare a response due to the need for declarations from various parties. The Stipulation agreed to continue the hearing to 3:00 p.m. on January 26, 2016. The Stipulation also stated that the Creditor would cease all telephone calls to the Debtor, report the Debtor's account as current to

credit reporting agencies. The Debtor agreed that while the Motion is pending, the Debtor will submit payments to Ocwen Counsel.

ORDER

On November 22, 2015, the court issued an order continuing the Motion to 3:00 p.m. on January 26, 2016. Dckt. 174. The court ordered the Creditor's opposition shall be due by January 12, 2016 and any reply due by January 19, 2016.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on November 24, 2015. Dckt. 175. The Trustee states that the Debtor's plan was completed on February 26, 2015 and the Trustee was discharged from the case on September 3, 2015. The Trustee shows $177,257.09 has been paid to the Creditor.

STIPULATION

On January 13, 2016, the parties filed a stipulation. Dckt. 178. The Stipulation provides the following:

1. The parties have negotiated a settlement in regards to the Motion for Civil Contempt.

2. The parties have agreed to a cash payment to fully settle the disputes between the parties.

3. Debtor hereby withdraw their Motion for Civil Contempt as to Ocwen Loan Servicing, LLC, with prejudice.

4. The parties request that the hearing on the Motion for Civil Contempt currently scheduled for January 26, 2016 be taken off calender.

5. The Parties request that the Debtor's Chapter 13 bankruptcy case be closed.

DISCUSSION

In light of the compromise between the Debtor and Creditor, it appears that the matter has been resolved. The Debtor has negotiated with Creditor for a cash payment to fully settle the dispute in exchange for the Debtor withdrawing their Motion.

The court finds that the terms of the settlement appear to be fair and provides for the settlement of claims against Creditor for alleged discharge injunction violations.

Therefore, the Debtor having filed a "Withdrawal of Motion" for the pending Motion, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss with prejudice the Motion, and good cause appearing, the court dismisses with prejudice the

Motion for Civil Contempt Against Ocwen Loan Servicing, LLC.

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 Civil Contempt 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 dismissed with prejudice.
>
> **IT IS FURTHER ORDERED** that the case be closed.

23. 14-26456-E-13 JUANITA BRAMASCO — **MOTION TO APPROVE LOAN MODIFICATION**
MC-9 Muoi Chea — **12-22-15 [102]**

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 22, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Juanita Bramasco

("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,058.65 a month to $747.54 a month. The modification will have a balloon payment of $150,356.41 due at the maturity date of June 1, 2037. The interest rate will be 2.00%. There is a step up interest rate which will increase to 3.00% on year six and then to 3.75% on year seven. The interest rate will only apply to $169,020.37 of the total balance of $214,220.37. $45,200.00 of the total principal balance will not be charged interest under this loan modification.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The modification provides for the reduction in monthly payment, a reduction in interest rate, and also that part of the principal balance will not be charged interest. This appears to be in the best interest of the estate, Debtor, and creditors. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Juanita Bramasco having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Juanita Bramasco ("Debtor") to amend the terms of the loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 821 Meladee Lane, Galt, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 105.

24. 10-43866-E-13 RONALD/MARGARET SAGER
NSV-8 Nima S. Vokshori
MOTION TO WAIVE DEBTOR 11 U.S.C. SECTION 1328 REQUIREMENT
12-14-15 [134]

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, creditors, parties requesting special notice, and Office of the United States Trustee on December 14, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

Joint Debtor, Ronald William Sager, seeks an order approving the Motion to Waive Debtor, Margaret Mary Sager, 11 U.S.C. § 1328 Requirement.

The Debtor filed for relief under Chapter 13 on September 7, 2010. On May 28, 2011, the Debtor's Chapter 13 Plan was confirmed. Dckt. 87. On November 13, 2015, the Trustee filed a Notice to Debtors of Completed Plan Payments. Dckt. 125. On November 23, 2015, Debtor Margaret Mary Sager passed away. The Joint Debtor asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on December 14, 2015. Dckt. 131. Joint Debtor is the husband of the deceased party and is the successor's heir and lawful representative.

The Joint Debtor requests that the court waive the 11 U.S.C. § 1328 requirement for Debtor Margaret Mary Sager and that she be discharged in the instant case. FN.1.

FN.1. Though the Motion requests that the court Debtor Margaret Sager be discharged, the court interprets that language not to be that Debtor Margaret Sager be dismissed from the case, but a discharge be granted Debtor Margaret Sager.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on December 28, 2015.

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until

> the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Court Infers Surviving Debtor Seeks to be Substituted
As the Personal Representative For Deceased Debtor

Unfortunately here, the Joint Debtor has failed to actually substitute in as the deceased debtor's personal representative and to show that continued administration of the case is possible.

However, given the fact that the Debtors have completed the plan and all that remains is the § 1328 certificate and discharge of the deceased debtor, coupled with the non-opposition from the Trustee, the court will *sua*

sponte review whether Joint Debtor can be substituted in as the deceased Debtor and that the continued administration of the case is proper.

Here, Ronald William Sager 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. 131. 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, Ronald William Sager, as the husband 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, Margaret Mary Sager. The court grants the Motion to Substitute Party.

The Court Does Not Waive the Other Requirements of 11 U.S.C. § 1328

To obtain a discharge, a Debtor, or the Debtor's personal representative, must provide certain certifications. The Motion alleges that such certifications can be made. The Personal Representative of the Deceased Debtor can provide such represeentations under penalty of perjury and the Clerk may then enter the discharge for the Deceased Debtor in the ordinary court of dealing in this case.

No inability of the Personal Representative of provide the 11 U.S.C. § 1328 Certifications has been shown. That portion of the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for 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 Ronald William Sager is substituted as the successor-in-interest to Margaret Mary Sager and the administration of this Chapter 13 case shall continue pursuant to Federal Rule of Bankruptcy Procedure 1016.
>
> **IT IS FURTHER ORDERED** that the requirement for Margaret Sager to provide a certificate of having obtained post-petition debtor education, 11 U.S.C. § 1328(g)(1)is waived and such certification is not required for the entry of a discharge for Debtor Margaret Sager.
>
> **IT IS FURTHER ORDERED** that the balance of the relief requested in the Motion is denied.

25. 15-26969-E-13 JESUS AVILA **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 Douglas B. Jacobs **10-13-15 [20]**

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

The case having previously been dismissed, the Objection to Confirmation is dismissed as moot.

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

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

26. 13-31975-E-13 JACK/LINDA GANAS — CONTINUED MOTION TO MODIFY PLAN
PLC-4 Peter L. Cianchetta — 9-19-15 [79]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2015. By the court's calculation, 38 days' notice was provided. 35 days' notice is required.

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

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

Jack and Linda Ganas ("Debtor") filed a petition for Chapter 13 relief on September 12, 2013. Dckt. 1. Debtor filed an original Plan on September 12, 2013, then a subsequent First Amended Plan on November 15, 2013; the November 15, 2013 Plan was confirmed on January 14, 2014. Dckt. 5, 28, 51.

Debtor now files a First Modified Plan on September 19, 2015, with accompanying Motion to Confirm. Dckt. 79, 82.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee") filed opposition to confirmation on October 13, 2015. Dckt. 87. Trustee asserts two grounds to deny confirmation: first, there is no filed loan modification with Wells Fargo; second, the Trustee asserts Debtor cannot afford to pay the monthly plan payments.

First, Debtor declares that Wells Fargo offered a loan modification, which Debtor intends to accept because "Jack was hurt on the job and is currently on Workers Compensation and SDI." Dckt. 81 ¶ 13. However, Trustee declares there is no record of the loan modification on the docket.

In part because the loan modification is not on the record, Trustee is unsure that Debtor can afford the proposed monthly plan payments. In addition, the amended Schedule I filed September 9, 2015, demonstrates a reduction in income from $5,178.88 to $4,405.67; the last Schedule J filed on September 12, 2013, reflects Debtor's monthly expenses as $3,096.00. Without an amended Schedule J, Trustee asserts that Debtor may only afford a monthly plan payment of $1,309.67.

OCTOBER 27, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on December 15, 2015 to permit time for a Motion to Approve Loan Modification to be filed and set. Dckt. 91.

DECEMBER 15, 2015 HEARING

At the hearing, the parties reported that the disputes have been resolved and the motion to approve the loan modification and compromise are being filed. Dckt. 92. The court continued the hearing to 3:00 p.m. on January 26, 2015 to allow the parties to file the motions.

DISCUSSION

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

To date, the Debtor has failed to file a response to the instant Motion and has failed to file a Motion to Approve Loan Modification.

Trustee's objections are well-taken. In sum, Trustee's concern is that Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). A review of the court's docket shows no loan modification has been filed with the court; the only related document is a Notice of Mortgage Payment Change, filed by Wells Fargo Bank, N.A. on June 2, 2015. Further, Debtor's First Modified Plan asserts monthly payments of $2,017.91 in § 1.01, while the Additional Provisions assert a Loan Modification has been filed for court approval; Debtor's Declaration asserts a plan payment of $1,300.00 on the assumption that a Loan Modification will be approved. Dckt. 81, 82. Both items rely on the assumption that the Loan Modification will be filed and approved, but no such document has been filed with the court. Debtor's Declaration also declares Debtor's expenses have remained steady at $3,096.00. Dckt. 81. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

This is the second time that the parties have represented that they are in the process of filing necessary motions to consummate their settlement. However, both times, the parties have failed to do so.

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

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

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

27. 10-52982-E-13 KATHRYN KELLEY — MOTION TO MODIFY PLAN
PLG-2 Steven A. Alpert — 12-9-15 [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 Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2015. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 11-35484-E-13 WILLIAM/DIANE CATLETT MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 12-21-15 [79]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on February 23, 2016. The Debtor shall file and serve any supplemental papers on or before February 9, 2016. Any objections or responses shall be filed and served on or before February 16, 2016.

William and Diane Catlett ("Debtor") filed the instant Motion to Confirm on December 21, 2015. Dckt. 79.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 8, 2016. Dckt. 92. The Trustee opposes confirmation because the plan is not the Debtor's best efforts. The plan proposes "$117,913.72 through 11-15, $415 x 7 starting 12-15" with a 2% dividend to unsecured creditors. The Plan attempts to reclassify Class 1 claimant Shellpoint for Debtor's residence to Class 4 to be paid outside the plan. The Trustee states that under the current confirmed plan, the Trustee was paying the ongoing mortgage monthly installment amount of $1,862.43. The Debtor's are attempting the modify the loan to reduce the payment to $1,474.12, a difference of $388.22.

The Trustee states the following as grounds for why the plan is not the Debtor's best efforts:

1. The Debtor is seeking to reduce the plan payment by $1,610.00, an additional $135.88 beyond what the Debtor had indicated they had available.

2. The Debtors' declaration (Dckt. 81) indicates that the plan continues to have an expense of $25.00 a month for "Vehicle Tax/License" which should be explained by the Debtor as this represents $3,108.00 per year for "Vehicle Tax/License" which the Trustee argues appears high.

3. The Debtor has not addressed what tax refund, if any, is expected for 2015.

4. The Debtor also states adjusted changes to the Debtors' budget as follows:

Expense	**Original Expense**	**Adjusted**	**Reason**
Food	$700.00	$1,200.00	We have 3 growing children who eat more each year
Education	$100.00	$600.00	Daughter has gymnastic class. Other daughter is on a traveling soccer team that involves more monthly fees and travel expenses.
Home Main	$50.00	$200.00	Our home is almost 100 years old and need continuous repairs. The sewer has needed to be cleaned out, toilet replaced, stucco redone, windows recauled [sic], washing machine
Clothing	$50.00	$150.00	We have three children that need seasonal clothing, now winter jackets and shoes. Clothes don't last more than a year with growth spurts
Personal	$75.00	$150.00	We have fiver persons that need haircuts, hair products, facial and body care
Entertainment	$36.00	$98.00	We have a family of five, including a teenager with expenses with friends
Water/Sewer	$110.00	$143.00	City bill has increased every year

According to the listed changes, the Debtor's expenses have increased by $1,410.00, but no specific proof supporting the increase has been filed. The Trustee highlights the $500.00 increase per month in monthly education costs.

5. The Debtor's amended Schedule I (Dckt. 82) lists a monthly income of $5,777.90. Compared to the last filed Schedule I (Dckt. 1) that list a monthly income of $4,508.57, it appears the Debtor's income has increased by $1,269.33.

DEBTOR'S REPLY

The Debtor filed a reply on January 19, 2016. Dckt. 98. The Debtor requests a continuance of the hearing to allow the Debtor the opportunity to address the Trustee's concerns.

DISCUSSION

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

The Trustee's objections are well-taken. There is a lack of full explanation for the changes in expenses, the failure to indicate the procedure for any tax refunds, and the failure to provide explanation for the high vehicle costs.

However, these may be addressed by supplemental papers by the Debtor. In light of the Debtor's request and the Trustee's objections mainly being concerned with lack of explanation, the court continues the instant Motion to Confirm to 3:00 p.m. on February 23, 2016. The Debtor shall file and serve any supplemental papers on or before February 9, 2016. Any objections or responses shall be filed and served on or before February 16, 2016.

Debtor must address another issue, which goes to the heart of whether the case is being prosecuted in good faith. In the Motion to Confirm, Debtor states,

> Due to a loan modification, Debtors cannot complete the plan as originally confirmed as stated under penalty of perjury in the accompanying Declaration of Debtors. In that Declaration Debtors state, "'We have secured a permanent loan modification with our lender and have been remitting that payment directly to the servicing agent, pursuant to the terms of the modification.'"

Dckt. 79. The court has not yet authorized Debtor to enter into the modification (post-petition secured credit). However, Debtor states that they are intentionally violating the confirmed plan and diverting plan payments to the lender rather than making the payments to the Trustee. Debtor's apparent intentional, willful diversion of monies may manifest a lack of good faith, and possibly active bad faith which precludes confirming a plan in this case. Debtor can address how much money has been paid directly to lender, the legal basis asserted to do so, and how such direct payments are consistent with the good faith prosecution of this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 continued to 3:00 p.m. on February 23, 2016. The Debtor shall

file and serve any supplemental papers on or before February 9, 2016. Any objections or responses shall be filed and served on or before February 16, 2016.

29. 11-35484-E-13 WILLIAM/DIANE CATLETT
PGM-5 Peter G. Macaluso
MOTION TO APPROVE LOAN MODIFICATION
12-21-15 [85]

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 21, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by William and Diane Catlett ("Debtor") seeks court approval for Debtor to incur post-petition credit. The Bank of New York Mellon, serviced by Shellpoint Mortgage Servicing ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,474.12 a month at 3.75% interest. The modification will modify the principal balance to include all amounts and arrearages that will be past due as of the modification date (including unpaid and deferred interest, fees, escrow advances and other cots, but excluding unpaid late charges). The principal balance will be $317,196.36. The maturity date will be July 1, 2035.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides

evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The plan provides for the reduction in monthly payments and allows the Debtor to be able to continue payments. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by William and Diane Catlett having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes William and Diane Catlett ("Debtor") to amend the terms of the loan with The Bank of New York Mellon, serviced by Shellpoint Mortgage Servicing, which is secured by the real property commonly known as 2024 Larkin Way, Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit C in support of the Motion, Dckt. 88.

30. 14-32084-E-13 FF-3 STEVEN/SHARON COLLINS Gary Ray Fraley

CONTINUED OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 8
9-21-15 [63]

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, Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 21, 2015. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 8-1 of Wells Fargo Bank, N.A. ("Creditor") is sustained and the pre-petition arrearage claim is disallowed in the amount of $19,062.08 for the specified pre-petition advances.

DEBTOR'S OBJECTION TO CLAIM #8

Steven and Sharon Collins ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $304,496.31. Objector asserts that the escrow

account documentation is inaccurate and that the claim should be a total of $72,723.88.

The Objector asserts that the following inaccuracies:

1. The property taxes allegedly paid by Creditor were inflated by at least $4,100.00 per year. The Objector asserts that the Sacramento County property tax bill reflects a lower payment.

2. Creditor was charging $8,000.00 to $10,000.00 a year in property insurance. The Objector asserts that they tried to obtain a lower insurance rate through Creditor but were unsuccessful. The Objector states that in February 2014, the Objector obtained a policy through Farmers Insurance for $89.00 a month. However, the Creditor's claim indicates that they paid $8,498.00 for insurance in 2014.

The Objector asserts that the escrow shortage in the amount of $125,190.80 should not be included in the claim because the Creditor failed to show how the deficiency was determined.

WELLS FARGO OPPOSITION

Creditor filed an opposition on September 3, 2015. Dckt. 87. The following grounds were provided to oppose Debtor's Objection to Claim #8:

County of Sacramento Property Tax Advances

A. The Escrow Advance Statement for payments between February 2010 through January 2012 show total payments of $24,350.67 for "Payment of County Taxes;"

B. The Escrow Advance Statement for payments between February 2012 through May 2014 asserts total payments of $20,629.79 for "Payment of County Taxes;"

C. **The Escrow Advance Statement for payments between June 2014 through November 2014 asserts total payments of $3,496.02 for "Payment of County Taxes;" Creditor asserts that $3,396.02 was received by the County, which** the court notes is a discrepancy of $100.00;

Dckt. 87; Dckt. 89 Exh. 2 p. 45-46.

Hazard Insurance

D. The Escrow Advance Statement for payments between February 2010 through January 2012 show total payments of $14,962.26 for "Payment of Hazard Insurance;"

E. The Escrow Advance Statement for payments between February 2012 through May 2014 asserts total payments of $18,023.00 for "Payment of Hazard Insurance;" Creditor argues that Debtor's Objection on the Hazard Insurance relates to the July 2014 payment, where Debtor states this amount was $8,497.00 while Creditor alleges the amount paid was $1,204.42;

F. The Escrow Advance Statement for payments between June 2014 through November 2014 asserts total payments of $1,262.54 for "Payment of Hazard Insurance;"

Dckt. 87; Dckt. 89 Exh. 2 p. 14. FN.1.

FN.1. Creditor requests that the court take judicial notice of Exhibits 1 and 2, filed with Creditor's Opposition. Under Federal Rules of Evidence 201, Facts subject to judicial notice are those which are either:

> (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). The party requesting judicial notice bears the burden of persuading the court that the particular fact is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to a source "whose accuracy cannot reasonably be questioned." *In re Tyrone F. Conner Corp.*, Inc., 140 B.R. 771, 781 (Bankr. E.D. Cal.1992).

Newman v. San Joaquin Delta Community College Dist., 272 F.R.D.505, 515-16 (E.D. Cal. 2011). Here, Creditor provides no evidence to the court on how the amounts are dates of the payments are "not reasonably subject to dispute and [are] capable of immediate and accurate determination by resort to a source whose accuracy cannot reasonably be questioned." However, because these documents were provided as a part of the original Proof of Claim #8-1, the court will waive this error.

The payments in Exhibit 2 for Hazard Insurance are reflected in Section 6, which extends from June 2014 through May 2015. Dckt. 89 Exh. 2 p. 14. The court cannot find, and Creditor does not cite to, any evidence to support the Opposition's allegations that during the February 2010 through May 2014 period any payments were made for Hazard Insurance. Dckt. 87 p. 9. In addition, there is no evidence provided for who $1,262.54 was paid to for the June 2014 through November 2014 period. In short, Creditor's assertions on the payments for Hazard Insurance between February 2010 through May 2014 are not supported by evidence. Dckt. 88.

On these grounds, Creditor argues that Debtor's Objection should be denied. Dckt. 87.

NOVEMBER 17, 2015 HEARING

At the hearing, the court continued the hearing to January 26, 2016 at 3:00 p.m. Dckt. 95. The court further ordered that on or before December 15, 2015, Wells Fargo Bank, N.A. shall file and serve Supplemental Opposition it the Objection, which shall include credible, admissible, properly authenticated evidence. On or before January 7, 2015, Responses, if any, to the Supplemental Opposition, were ordered to be filed and served.

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

Objection to date.

DISCUSSION

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

Address Objections and Determining Amount of Claim

Debtor first objects to the asserted advances for taxes were inflated "by at least $4,100.00 per year." However, the Objection does not state what the correct amounts are for each year, the amounts asserted to have been included in the proof of claim, and the actual amount for the taxes advanced by Wells Fargo Bank, N.A.

Next, Debtor objects that Wells Fargo Bank, N.A. was charging $8,000 to $10,000 a year for property insurance. Debtor asserts that the premium for insurance obtain "by Debtor" (as opposed to forced place insurance) was $1,100.00 for 2014. Therefore, Debtor asserts that the insurance should be $1,100.00. Additional, amount for prior years "are excessive" and therefore "must be in error."

Debtor asserts that Wells Fargo Bank, N.A. has failed or refused to provide an explanation of the taxes or insurance advanced by the Bank.

For its "Opposition," Wells Fargo Bank, N.A. has been unable to present any witness who is able, or possibly willing, to provide any testimony to support its claim in this case. Instead, the best the Bank can do is have its attorney argue and then rely on the prima facie evidentiary effect of a Proof of Claim. While having such prima facie validity, the objecting debtor or other party in interest need only present a substantial factual basis 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).

Further, the computer screen shot from the County Tax Collector's webpage contains the following statement:

> "This service has been provided to allow easy access and a visual display of County Property Tax information. All reasonable efforts have been made to ensure the accuracy of the data provided; **nevertheless, some information may be out of date or may not be accurate. The County of Sacramento assumes no liability arising from the use of this information.** [California Revenue and Taxation Code Section 408.3, subdivision (d).] **ASSOCIATED DATA ARE**

> **PROVIDED WITHOUT WARRANTY OF ANY KIND**, either expressed or implied, **including** but not limited to, the **accuracy**, adequacy, **completeness**, **legality**, **reliability**, merchantability, fitness for a particular purpose, or usefulness of any information provided. The County of Sacramento reserves the right to make changes and updates to the information at any time without notice. **Do not make any business decisions based on this data before validating the data with the Sacramento County Department of Finance, Tax Collector-Auditor-Treasurer Division.**"

Exhibit 2, Dckt. 89 [emphasis added]. The very screen shot which Wells Fargo Bank, N.A. relies expressly states " **Do not make any business decisions based on this data before validating the data with the Sacramento County Department of Finance, Tax Collector-Auditor-Treasurer Division.**" Yet its is the best evidence that Wells Fargo Bank, N.A. presents to this court to make the necessary factual and legal findings. This further undercuts the value of the Proof of Claim No. 8.

While the Proof of Claim asserts there being $9,526.00 insurance payments and annual property taxes of approximately $8,000 to $9,000 a year, there is no evidence that such payments are for the actual property taxes, or that such insurance is the reasonable and necessary insurance for this property. Wells Fargo Bank, N.A.'s response is so ephemeral that it tries to present unauthenticated printouts of the Tax Collectors webpage instead of copies of properly authenticated tax statements and cancelled checks or other payment documentation.

Proof of Claim No. 8-1 has attached to it a projected future yearly disbursement of $9,011.58 for property taxes and $8,497.00 for Property Taxes. Proof of Claim No. 8-1 pg. 7. The Attachment also provides the following information (which is stated under penalty of perjury by Melissa G. Young, a "Vice President Loan Documentation" for Wells Fargo Bank, N.A.) that in the 12 month period which preceded the filing of the proof of claim Wells Fargo Bank, N.A. actually paid:

A. $3,295.53 in March 2012 for the County Property Taxes.

B. $8,321.68 for property taxes (comprised of payments on November 2012 and March 2013, which appear to be for the 2012-2013 tax year).

C. $9,011.58 for property taxes (comprised of payments on November 2013 and March 2013 [which appears to be a typo as being out of chronological order in the chart] that appear to be for the 2013-2014 property tax year.

D. $9,526.00 for hazard insurance in October 2012.

E. $8,497.00 for hazard insurance in October 2013.

To counter the prima facie evidentiary value of the Proof of Claim, Debtor provides a copy of the actual annual property tax statement sent by the County Tax Collector. For 2014 the total annual tax bill was $6,992.04.

Because of Proposition 13, the California Constitution limits the ability of counties to increase taxes, rendering the $6,992.04 figure a relatively stable amount for purposes of this objection.

The Debtor also provides testimony and evidence that for the homeowner, the appropriate insurance for the property would cost a premium $1,237.54. The evidence is that this is with Farmers Insurance Company. The insurance is not only for the dwelling and $100,000 personal liability coverage, but also $396,000 of personal property and contents replacement coverage, $211,200 loss of use coverage, and $30,000 identity fraud coverage. These additional coverage items are not insurance that a lender would obtain to provide reasonable coverage for its $304,496.31 secured claim. In addition to the value of the structure, the Bank's deed of trust includes the real property itself, which has a value beyond the insured structure. Finally, the deductible on the Debtor's policy is $5,000.

Wells Fargo Bank, N.A. has failed to provide the court with any evidence that the taxes should exceed $6,662.04 for the 2012, 2013, or 2014 property tax years. It appears that the March 2012 payment was for second property tax payment for the 2011-2012 tax year.

2012-2013 Property Taxes

The purported property tax advance for the 2012-2013 in the amount of $8,321.68 has been rebutted by Debtor and is disallowed in the amount of $1,659.64.

2013-2014 Property Taxes

The purported property tax advance for what is identified above for the 2013-2014 tax year in the amount of $9,011.58 has been rebutted by Debtor and is disallowed in the amount of $2,349.54.

Hazzard Insurance

The purported forced place hazard insurance to reasonably insure Wells Fargo Bank, N.A. for its $304,496.31 as the lender in the amount of $9,526.00 paid in October 2012 has been rebutted by Debtor. In Proof of Claim No. 8, Wells Fargo Bank, N.A. admits that its claim is fully secured (there being no unsecured claim). This is consistent with Debtor stating a value of $450,000 for this property on Schedule A (Dckt. 1).

Wells Fargo Bank, N.A. offers no evidence to show that the purported $9,526.00 insurance charge is reasonable or bona fide. The insurance presented by Debtor goes well beyond insuring the value of the structure for the amount of the Wells Fargo Bank, N.A. secured claim. The court deducts 20% for the non-structure coverage and then increases that reduced amount by 50% to the owner's premium amount for forced place insurance. The computation of the reasonable forced place insurance amount, (based on the evidence presented by the parties) is as follows:

A.	Owner's Premium.....	$1,237.54
B.	20% Reduction for Non-Structure Insurance.....	($ 247.51)
	Subtotal.....	$ 990.03
C.	50% Addition to Subtotal for Forced Place Ins..	$ 495.02

Total Reasonable Forced Place Insurance
(Based on Evidence Presented).....$1,485.05

The claim of $9,526.00 for hazard insurance paid in October 2012 has been rebutted by Debtor and is disallowed in the amount of $8,040.95.

The claim of $8,497.00 for hazard insurance paid in October 2013, has been rebutted by Debtor and is disallowed in the amount of $7,011.95.

The above items are the only objections which the court can identify in the present objection to be adjudicated. There, the court makes the following adjustments to the $125,190.89 arrearage amount asserted by Wells Fargo Bank, N.A. in Proof of Claim No. 8:

Arrearage Amount Stated in Proof of Claim No. 8	$125,190.89
Reduction for $8,321.68 for purported property taxes (comprised of payments on November 2012 and March 2013, which appear to be for the 2012-2013 tax year) which has been rebutted by evidence presented by Debtor Evidence.	($1,659.64)
Reduction for purported property tax advance for what is identified above for the 2013-2014 tax year in the amount of $9,011.58 which has been rebutted by evidence presented by Debtor.	($2,349.54)
Reduction for the purported hazard insurance in the amount of $9,526.00 purported to have been paid in October 2012, which has been rebutted by evidence presented by Debtor.	($8,040.95)
Reduction for the purported hazard insurance in the amount of $8,497.00 purported to have been paid in October 2013, which has been rebutted by evidence presented by Debtor.	($7,011.95)
	==========
Reduced Amount of Arrearage Asserted by Wells Fargo Bank, N.A.	$106,128.81

Based on the evidence before the court, the creditor's secured claim is disallowed in the amount of $19,062.08. 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 Wells Fargo Bank, Proof of Claim No. 8, Creditor filed in this case by Steve Ray Collins

and Sharon Lavette Collins, the Chapter 13 Debtors ("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 Objection to the arrearage amount claimed and identified in Proof of Claim Number 8 by Wells Fargo Bank, N.A. for the following amounts:

A. $3,296.53 Property Tax Payment, March 2012
B. $9,526.00 Hazard Insurance Payment, October 2012
C. $4,160.84 Property Tax Payment, November 2012
D. $4,160.84 Property Tax Payment, March 2013
E. $8,497.00 Hazard Insurance Payment, October 2013
F. $4,505.79 Property Tax Payment, November 2013
G. $4,505.79 Property Tax Payment, March 2013

is sustained, and the claim disallowed in the amount of $19,062.08, reducing the arrearage included in Proof of Claim No. 8 to $106,128.81. The determination of the objections to these portions of Proof of Claim No. 8 is without prejudice to any other portions of the Claim which were not the subject of this Objection.

31. 15-24984-E-13 MARIE GARY
EWV-73 Eric W. Vandermey

CONTINUED MOTION TO CONFIRM PLAN
11-3-15 [33]

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 November 2, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 3, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

32. 15-26491-E-13 ROGER SINER **MOTION TO CONFIRM PLAN**
DBL-3 Bruce Charles Dwiggins **12-17-15 [30]**

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2015. By the court's calculation, 40 days' notice was provided. 42 days' notice is required.

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

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

Roger Siner ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 17, 2015. Dckt. 30. The court denies the Motion due to: (1) inadequate notice, (2) the "Motion" failing to comply with the minimal pleading requirements of Federal Rule of Bankruptcy Procedure 9013, and (3)

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on January 8, 2016.

DISCUSSION

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

Insufficient Notice

Unfortunately, the Debtor failed to provide sufficient notice. Pursuant to Local Bankr. R. 3015-1(d)(1), a minimum of 42 days notice is necessary. Fed. R. Bankr. P. 2002(b); Local Bankr. R. 9014-1(f)(1). Here, the Debtor only provided 40 days notice. This is an independent ground to deny confirmation.

Failure to Comply with Federal Rules of Bankruptcy Procedure

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

A. The Debtor proposes that the Chapter 13 Plan filed herewith be approved as the Debtor's plan.

B. The originally filed plan has not been approved or confirmed.

C. A true and correct copy of the plan is filed herewith and made a part hereof.

D. Debtor is amending his plan to include the correct monthly payment on his adjustable rate mortgage. Hi [sic] is also amending the plan to include the total amounts owed to IRS, Members First and Les Schwab per the claims filed by these creditors.

E. Debtors net monthly income which is available to make the plan payments is $2,476.32.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the reasons for the amendment but does not assert grounds as to how the plan complies with the necessary Bankruptcy Code sections. This is not sufficient.

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

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

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

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

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

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

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

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

allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

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

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

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

For years this court has required attorneys and pro se parties (with a more lenient eye) to comply with these minimal pleading requirements. Parties are not left to guess when the Rules apply and when they can just "let it slide."

Therefore, due to the failure to provide sufficient notice and failing to comply with Fed. R. Bankr. P. 9013, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

33. 15-25094-E-13 ALEX/MICHELE MARTINEZ
DPC-1 Mark W. Briden

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-20-15 [33]

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 August 20, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's previous motion to Value Collateral of Green Tree Servicing LLC was denied on August 18, 2015. The Trustee alleges that without the court valuing the secured claim, the Debtor cannot make plan payments.

SEPTEMBER 15, 2015 HEARING

At the hearing, the court continued the Objection to 3:00 p.m. on

October 27, 2015 to be heard in conjunction with the Motion to Value. Dckt. 46.

OCTOBER 27, 2015 HEARING

In light of the Trustee's Objection being based upon the Motion to Value, the court continued the Objection to 3:00 p.m. on December 8, 2015 to be heard in conjunction with the Motion to Value. Dckt. 54.

DECEMBER 8, 2015 HEARING

In light of the Trustee's Objection being based upon the Motion to Value, the court continued the Objection to 3:00 p.m. on January 26, 2016 to be heard in conjunction with the Motion to Value. Dckt. 66.

DISCUSSION

The Debtor filed a Motion to Value Green Tree Servicing LLC on September 11, 2015. Dckt. 40. A review of the Motion shows that the Debtor once again listed Green Tree Servicing LLC as the creditor without providing any evidence that Green Tree Servicing LLC is the actual creditor rather than merely the loan servicer. Dckt. 53

On December 28, 2015, Ditech Financial LLC filed an amended Proof of Claim No. 3-1, identifying "Beneficial Financial I, Inc. successor-by-merger to Beneficial California, Inc." as the creditor.

In light of the amended Proof of Claim and the Motion to Value incorrectly identifying the creditor, the court denied the Motion to Value.

However, Green Tree Servicing LLC failed to file a response as ordered by the court. The Debtor also failed to provide any supplemental papers.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Green Tree Servicing LLC. However, the Debtor has failed to file a Motion to Value the Collateral naming the actual creditor. Additionally, the Plan, as evidenced by Proof of Claim No. 3-1, no longer identifies the actual creditor. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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.

34. 15-25094-E-13 ALEX/MICHELE MARTINEZ
MWB-2 Mark W. Briden

CONTINUED MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC
9-11-15 [40]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 11, 2015. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion to Value secured claim of Green Tree Servicing LLC ("Creditor") is denied without prejudice.

This Motion has wound through a five month journey to identify the actual creditor having a claim in this case so that the court may property exercise federal court jurisdiction to determine an actual claim or controversy between the real parties in interest. U.S. Const. Article III, Section 2.

In this Motion Debtor sought to have the court determine the secured claim of "Green Tree Servicing, LLC." Dckt. 40. Debtor asserted that Green Tree Servicing, LLC was the creditor by virtue of an assignment of the deed of trust securing a note for which Beneficial California, Inc. was the beneficiary. A copy of the assignment of the deed of trust was provided by Debtor as Exhibit A-1. Dckt. 42.

In the assignment, HSBC Finance Corporation, identified as "successor servicer to Beneficial Financial l Inc." acting through its attorney in fact Green Tree Servicing, LLC purports to assign all beneficial interest under the deed of trust to Green Tree Servicing, LLC. Thus, Green Tree Servicing, LLC, as the fiduciary holding a power of attorney, purports to assign the beneficial interest in the deed of trust to itself. The assignment also states that the assignment includes money due and to become due under the deed of trust. The deed of trust is provided as C by Debtor. *Id.* Only one page of the deed of trust is provided. Presumably, it includes what are standard provisions in

California by which the borrower agrees to reimburse the beneficiary for costs and expenses incurred in enforcing the deed of trust.

No evidence of any assignment of the underlying note is provided. As is well established under California law, any purported assignment of a deed of trust or mortgage to a person other than the owner of the note it secures is a nullity. *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); *accord Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code §2936. *See Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, (9th Cir. 2011) addressing the issue under comparable Arizona law. The deed of trust always "follows" the note.

Proof of Claim No. 3 filed in this case identified Green Tree Servicing, LLC as the creditor for the claim at issue in this Motion. Attorneys for Green Tree Servicing, LLC signed Proof of Claim No. 3 under penalty of perjury stating that Green Tree Servicing, LLC was the creditor. It is likely that this Proof of Claim No. 3 led the Debtor into naming Green Tree Servicing, LLC as the party whose rights and interests were to be modified in this Motion.

While it is surprising that a loan servicing company would be named as the creditor given that the court has now been addressing for several years the requirement to correctly identify parties (such as the creditor in a proof of claim or opposing party in a motion), it is equally surprising that experience debtor counsel would just accept that disclosure and proceed to try and litigate against a loan servicing company. Entities such as Green Tree Loan Servicing, LLC have made it clear that while they service a useful, bona fide business purpose in being a loan servicer, they are not a creditor. When a loan servicer is (mis)identified as the creditor, debtor attorneys have at their disposal a Rule 2004 examination by written interrogatories and production of documents for a disclosure of either: (1) te actual creditor or (2) proof that the servicer is the actual owner or holder (as that term is used in the Commercial Code) of the note which evidence the debt (claim).

As this court has previously stated, for a federal judge to exercise federal jurisdiction, he or she must have a good faith belief that the real parties in interest to the claim or controversy are before the court. Otherwise, the court (and in this case the Debtor) would be misled into issuing an order of dubious effect and not against the actual creditor. When the court saw that Debtor was attempting to litigate the "claim" of a loan servicer, it did not have a good faith belief that relief was being sought against a creditor having a claim to be valued pursuant to 11 U.S.C. § 506(a).

Therefore, the court ordered Ditech Financial, LLC, the successor by merger to Green Tree Loan Servicing, LLC, to file either evidence that Ditech Financial, LLC was the creditor or an amended proof of claim which correctly identifies the actual creditor (as that term is used in 11 U.S.C. § 101(10) and (5)). Orders, Dckt. 54, 67.

On December 29, 2015, Ditech Financial, LLC filed Amended Proof of Claim No. 3 which identifies the actual creditor to be Beneficial Financial l, Inc., successor-by-merger to Beneficial California, Inc. Amended Proof of Claim further states that notices (which is not the same as service of process) and payments are to be sent to Ditech Financial, LLC (as one would expect for a loan servicer).

With the information provided in Amended Proof of Claim No. 3, Debtor's response is that the pleadings have been served on Green Tree Servicing, LLC and Ditech Financial, Inc., and since notices are sent there, the court should grant the motion and determine the value of the claim of Ditech Financial, Inc., as successor to Green Tree Servicing, LLC. Dckt. 70. This response misses on several major Constitutional and procedural issues.

First, the relief requested is not against the actual creditor, but only against the loan servicer. No relief is sought against Beneficial Financial l Inc., the creditor having the claim and whose rights and interests are to be altered. Ditech Financial, Inc. is not the stand-in dummy entity for the real party in interest. The real parties in interest, whether to sue or defend, must be the parties to the federal court proceeding. Arizonans for Official English v. Arizona, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997). Clearly, the actual creditor is not a party to this Contested Matter.

Second, to the extent that Debtor argues that since service was made on Ditech Financial, LLC and Green Tree Servicing, LLC, it can be imputed to Beneficial Financial l Inc., it misses on at least two points. First, while "notices" may be sent to Ditech Financial, LLC, a motion (contested matter) must be served in the same manner as a complaint. Fed. R. Bankr. 9013, Fed. R. Civ. P. 4 and Fed. R. Bank. P. 7004. There is no showing that Ditech Financial, LLC is Beneficial Financial l, Inc. or the authorized agent to accept service of process for Beneficial Financial l, Inc. Second, no relief is requested against Beneficial Financial l, Inc. Debtor cannot amended the Motion to name a different party or join a different party to the Motion. Fed. R. Bank. P. 7015, 7019, and 7020, and Fed. R. Civ. P. 15, 19, and 20 are not incorporated into contested matter practice. Fed. R. Bankr. P. 9014.

If the court were to grant the relief requested, the court would be knowingly valuing the "secured claim" of an entity which the court knows is not a creditor. The court is surprised that Debtor seeks such an order.

The court denies the relief without prejudice. Debtor may file a new motion naming the actual creditor. The court is surprised that upon learning the name of the actual creditor (as ordered by the court, not through any simple discovery conducted by Debtor) Debtor did not immediately file and serve a new motion.

To have the totality of the proceedings in one set of Civil Minutes, the court includes the following discussion as part of this ruling.

DISCUSSION OF MOTION AND HISTORY OF THIS CONTESTED MATTER

The Motion to Value filed by Alex Martinez and Michele Martinez ("Debtors") to value the secured claim of Assignee, Green Tree Servicing LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2725 Sandstone Drive, Anderson, California ("Property"). Debtor seeks to value the Property at a fair market value of $180,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not

the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed by Green Tree Servicing, LLC is the claim which may be the subject of the present Motion.

OPPOSITION

Creditor has not filed an opposition.

OCTOBER 27, 2015 HEARING

At the hearing, the court issued the following order:

> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on December 8, 2015, telephonic appearances permitted.
>
> **IT IS FURTHER ORDERED** that Ditech Financial, LLC, successor to Green Tree Servicing LLC, and Green Tree Servicing, LLC to the extent it exists as a separate entity, shall file and serve all properly authenticated documents that evidence that Green Tree Servicing LLC is, in fact, the creditor either holding the Note endorsed in blank or otherwise or that Green Tree Servicing LLC is the beneficiary of the Deed of Trust on or before November 10, 2015.
>
> **IT IS FURTHER ORDERED** that any replies or oppositions shall be filed and served on or before November 24, 2015.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve the instant order on Ditech Financial, LLC and Green Tree Servicing, LLC at the following addresses:

Katelyn R. Knapp
Attorney for Green Tree Servicing LLC
Malcolm Cisneros, A Law Corporation
2112 Business Center Drive
Irvine, CA 92612

Green Tree Servicing, LLC
Attn: Officer or Agent
345 St. Peter Street, Ste. 600
Saint Paul, MN 55102

Ditech Financial LLC
Attn: Officer or Agent
1400 Landmark Towers
345 St. Peter Street
Saint Paul, MN 55102

Telephonic appearances are permitted for any persons or counsel who choose to appear. The court does not order Ditech Financial, LLC; Green Tree Servicing, LLC; or the attorneys for either to appear at the continued hearing.

In issuing the order, the court notes that the California Secretary of State does not list "Green Tree Servicing, LLC" as an entity authorized to do business in the State of California. http://kepler.sos.ca.gov/. The California Secretary of State now lists only Ditech Financial, LLC. A review of the LEXIS NEXIS corporate filing data base lists Green Tree Servicing, LLC as a historical name for Ditech Financial, LLC. This is consistent with a recent Wall Street Journal article relating to Green Tree Servicing, LLC being merged into and being a part of Ditech Financial, Inc., as part of a restructuring by the common parent holding company. Ditech Funding, LLC may also address how, with the merger the parties and courts are going to properly address relief being granted or relating to the interests of the entity formerly known as Greet Tree Servicing, LLC.

Dckt. 54.

DECEMBER 8, 2015 HEARING

At the hearing, to afford Ditech Financial, LLC, successor to Green Tree Servicing LLC, and Green Tree Servicing, LLC one more chance to provide authenticate evidence as to who the actual creditor is, the court continued the Motion on last time to 3:00 p.m. on January 26, 2016. Dckt. 67. DiTech, Inc. was ordered to file and serve an amended Proof of Claim on or before December 31, 2015.

PROOF OF CLAIM NO. 3

On December 29, 2015, Ditech Financial, LLC, filed an amended Proof of Claim No. 3. The Proof of Claim indicates that the current creditor is "Beneficial Financial I, Inc. successor-by-merger to Beneficial California, Inc." The Proof of Claim indicates that notices to Creditor shall be sent to:

Ditech Financial LLC
7360 S. Kyrene Rd. T-120
Tempe, AZ 85283

DEBTOR'S RESPONSE

On January 12, 2016, the Debtor filed a response to the amended Proof of Claim No. 3. Dckt. 70. The Debtor states that the Debtor served Linda Thorton Green Tree Servicing LLC 7340 South Kyene Rd T-330 Tempe, AZ 85283 on September 11, 2015. Dckt. 43. The Debtor states that the Debtor's counsel will serve by certifies all pleadings to Ditech Financial LLC 7360 S Kyene Rd. T-120 Tempe, AZ 85283.

DISCUSSION

The Debtor has provided the alleged Assignment of Deed of Trust, dated on August 17, 2015. Dckt. 42, Exhibit A. The Assignment states the following:

> For value received, the undersigned holder of a Deed of Trust (herein "assignor") whose address is c/o 7360 South Kyrene Road, Tempe, AZ 85283, does hereby grant, sell, assign, transfer and convey, unto Green Tree Servicing, LLC (herein "Assignee"), whose address is 7360 South Kyrene Road, T-314, Tempe, AZ 85283, all beneficial interest under a certain Deed of Trust described below and obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such Deed of Trust.

Dckt. 42

The signature block of the "Assignor" states it is signed by:

> HSBC Finance Corporation as successor servicer to Beneficial Financial Inc. a California corporation, on behalf of itself and as successor by merger to Beneficial California Inc. by its Attorney-in-Fact Green Tree Servicing LLC

Dckt. 42.

First, the court notes that there is no such position of "holder of a Deed of Trust." A party can be a holder of a Note endorsed in blank and a party can be the beneficiary of a Deed of Trust - however, a party cannot be the holder of a Deed of Trust.

Second, based on the language of the signature block, Green Tree Servicing, LLC appears to be the Attorney-in-Fact for HSBC Finance Corporation, who is stated to be the "successor servicer." Essentially, the signature block states that HSBC Finance Corporation is not, in fact, the beneficiary of the Deed of Trust or the holder of the Note, but instead is the successor servicer,

which makes Green Tree Servicing LLC, the servicer of a servicer. This representation does not indicate that there was actually any assignment of the underlying Note or the Deed of Trust which would entitle Green Tree Servicing LLC to be the creditor in fact.

Third, this Assignment does not appear to have been recorded. The alleged Assignment does not have a evidence that it was recorded with the Shasta County Recorder's Office nor does a search of the Shasta County's website provide any evidence that such Assignment was recorded. FN.1.

FN.1. http://apps.co.shasta.ca.us/riimspublic/Asp/ORPublicDocNameList.asp

---

A review of the Proof of Claim No. 3 does not provide any further insight. The Proof of Claim was filed by Katelyn R. Knapp, as attorney for Green Tree Servicing LLC. The Proof of Claim names Green Tree Servicing LLC as the creditor. Ms. Knapp is an attorney with a Southern California law firm and does not appear to be an employee of or have personal knowledge of the business operations of Green Tree Servicing, LLC. As discussed above, the documents attached to the Proof of Claim, which Ms. Knapp has signed under penalty of perjury do not document how Green Tree Servicing, LLC has ended up being the creditor.

Attached to the Proof of Claim is the Loan Agreement. The Loan Agreement states that the lender is "Beneficial California Inc." The Amount Financed is stated to be $25,099.31. Later on in the Loan Agreement, in the About Your Loan Repayment section beginning on page 4, states that the Amount Financed is $25,099.31 and the Principal as $26,378.74.

The amended Proof of Claim filed by Ditech indicates that Beneficial Financial I, Inc. successor-by-merger to Beneficial California, Inc. is the current creditor. As discussed supra, it appears that the alleged transfer to Green Tree Servicing LLC was not, in fact, effective or recorded. The attachments to Proof of Claim No. 3-1 no long contains the Assignment of Deed of Trust, raising questions over why this assignment was never recorded and why there would be an uneffective assignment.

The Debtor does not provide any evidence that shows that the Note, endorsed in blank, is held by Green Tree Servicing LLC or that the unrecorded Assignment does anything more than transfer the servicing rights. The missing link continues to be over whether HSBC Finance Corporation has, in fact, at any point been the holder of the Note (whether endorsed in blank or otherwise) or that it has been assigned as the beneficiary under the Deed of Trust. It appears that the "assignment" was just to appease the court into believing that Green Tree, now Ditech, was the holder of the Note. However, as evidenced by the amended Proof of Claim, that assignment was never proper or effective.

The Motion, as it still stands, attempts to value the collateral of Green Tree Servicing LLC. As shown in the amended Proof of Claim No. 3, Green Tree Servicing, LLC is not the creditor who holds the security. Instead it is Beneficial Financial I, Inc. successor-by-merger to Beneficial California, Inc. Without the Motion accurately stating who the creditor is in fact, the Motion cannot be granted. However, now that the creditor has finally filed a Proof of Claim No. 3 identifying the actual creditor, the Debtor can file a Motion to

Value that correctly identifies the creditor for the court to properly value the claim pursuant to 11 U.S.C. § 506(a).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Alex Martinez and Michele Martinez ("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 is denied without prejudice.

35. 13-30998-E-13 RALPH SETTEMBRINO
MET-5 Mary Ellen Terranella

MOTION FOR COMPENSATION FOR MARY ELLEN TERRANELLA, DEBTOR'S ATTORNEY
12-21-15 [111]

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, creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Mary Ellen Tarranella, the Attorney "Applicant") for Ralph Settembrino ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 7, 2015 through October 14, 2015. Applicant requests additional fees in the reduced amount of $1,500.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preparing a Motion to Sell. The Applicant that due to the Debtor's tenants not paying their rent timely, the need to sell the property was unanticipated. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

In this District the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and

> most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Motion to Sell: Applicant spent 7.95 hours in this category. Applicant assisted Client with determining whether the short sell of the rental property is in the best interest of all parties, preparing amended schedules, reviewing the short sale contract, meeting with Client to prepare the Motion to Sell, and filing and appearing at the hearing on the Motion to sell.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Mary Ellen Terranella, Esq.	7.95	$325.00	$2,583.75
Total Fees For Period of Application			$2,583.75

The Applicant is requesting for the reduced amount of $1,500.00 and for the court to approve that the attorney's fees be paid through the proceeds from the sale. The Applicant states that the escrow officer informed the Applicant that the lender of the property, Wells Fargo Bank, had approved fees of $1,5000.00 to be paid from proceeds of the sale. The Applicant states that the Debtor's budget is very tight and that the Debtor would be unable to pay the additional fees.

FEES AND COSTS & EXPENSES ALLOWED

Fees

Applicant seeks to be paid a single sum of $1,500.00 for its fees incurred for the Client as unanticipated and substantial additional fees arising from the short sale of the property. The Applicant asserts that the services were substantial and unanticipated because at the inception of the case, the Client did not intend to sell the property. However, due to the tenants no longer paying the rent regularly, the Client was unable to stay current on the mortgage payment.

The court finds that the services were substantial and unanticipated. The Additional Fees in the amount of $1,500.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by Wells Fargo Bank, N.A. through the short sale proceeds of the real property commonly known as 36 Balboa Avenue, Vallejo, California in a manner consistent with the order of distribution from escrow.

Applicant is allowed, and the Wells Fargo Bank, N.A. is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,500.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Mary Ellen Terranella ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Mary Ellen Terranella is allowed the following fees and expenses as a professional of the Estate:

Mary Ellen Terranella , Professional Employed by Chapter 13 Debtor

Fees in the amount of $1,500.00

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that Wells Fargo Bank, N.A. is authorized to pay the fees allowed by this Order from the proceeds of the short sale of the real property commonly known as 36 Balboa Avenue, Vallejo, California in a manner consistent with the order of distribution from escrow.

36. 15-22998-E-13 TSION GETACHEW
DRE-2 D. Randall Ensminger

CONTINUED MOTION TO CONFIRM PLAN
9-16-15 [36]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 15, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Tsion Getachew ("Debtor") filed a petition with accompanying plan on April 14, 2015. Dckt. 1, 5. Debtor filed the instant Motion to Confirm First Amended Plan on September 16, 2015. Dckt. 35, 37.

WELLS FARGO BANK, N.A.'S OPPOSITION

Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Creditor") filed an opposition on September 30, 2015. Dckt. 44. The Creditor objects on two grounds:

1. The Debtor failed to acknowledge that the Creditor has a purchase money security interest in the Debtor's vehicle and that the plan does not provide for adequate protection payments for the claim secured thereby.

2. The proposed interest rate on the Creditor's claim of 0.00% is less than the guidelines provided in *Till*.

STIPULATION

On October 29, 2015, the Debtor and Creditor filed a stipulation. Dckt. 48. The stipulation provides the following:

1. The parties hereto agree that Creditor shall be paid its secured claim of $7,990.52 with interest thereon accruing at

the rate of 4.75% per annum, for the 2009 Lexus RX350, VIN XXXX0598, which is owned by Creditor and which remains in the possession of Debtor. The parties hereto further agree that the amount of Creditor's actual secured claim shall be the amount used by the Chapter 13 Trustee for purposes of computation hereunder and/or of the feasibility hereof.

2. The parties hereto agree that Creditor hold a purchase money security interest and that Creditor shall be entitled to receive pre- and post-confirmation monthly adequate protection payments of no less than $255.00 per month for the first four months and no less than $395.00 thereafter under and pursuant to Debtor's Chapter 13 Plan.

3. Debtor hereby agrees to amend the Chapter 13 Plan and/or accompanying schedules, as and if necessary, to ensure that the same conform with the terms set forth herein.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition on November 3, 2015. Dckt. 49.

Trustee objects on the grounds that Debtor is in material default because the plan exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). The proposed September 16, 2015 First Amended Plan asserts a 100% dividend to general unsecured creditors, but only accounts for $15,244.55 of the general unsecured claims. On review, Trustee believes the Debtor's proposed September 16, 2015 Plan does not account for Debtor's Motion to Value Collateral of Bank of America (DRE-1), which determined that Bank of America's claim for $98,442.77 was unsecured. Because this $98,442.77 is not provided for in the plan, adding this additional amount at a 100% dividend cannot be completed within the statutorily required 60 months using the September 16, 2015 Plan proposed payments.

NOVEMBER 17, 2015 HEARING

At the hearing, the court ordered that on or before December 15, 2015, Debtor shall file and serve Supplemental Pleadings setting forth the further proposed amendments to the proposed First Amended Plan. Oppositions to the further proposed amendments shall be filed and served on or before January 14, 2016. Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

DEBTOR'S SUPPLEMENTAL POINTS AND AUTHORITIES

The Debtor filed a supplemental points and authorities on December 15, 2015. Dckt. 55. The Debtor asserts that pursuant to Fed. R. Bankr. P. 3002(a), Bank of America, N.A. has not proved proof necessary of a potential unsecured claim and without a creditor filing a proof of claim for an unsecured claim, the claims are not recognized.

TRUSTEE'S WITHDRAWAL

The Trustee filed a withdrawal of his objection on January 11, 2016.

Dckt. 60. The Trustee states that he withdraws his opposition due to court's recent rulings on similar motions.

DISCUSSION

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

The Debtors have provided evidence in support of confirmation. No opposition to the Motion is remaining from the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 16, 2015, as amended to provide for the payment of the Wells Fargo Bank, N.A. secured claim as provided in the Stipulation filed on October 29, 2015 (Dckt. 48) is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.