

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

February 10, 2015 at 2:00 P.M.

1. [13-33614](#)-C-13 JACOB WORLEY CONTINUED MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso 9-11-14 [[49](#)]

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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

PREVIOUSLY

On October 21, 2014, the court held an initial hearing on the Motion and continued the matter to permit Debtor to supplement the record and afford the Internal Revenue Service an opportunity to file its 11 U.S.C. § 1305 claim.

At the hearing on January 13, 2015, the court's decision was to continue the Motion to Confirm to February 10, 2015 to give the Internal Revenue Service time to file its claim for post-petition taxes, to ensure the paystubs Debtor provided to the Trustee adequately substantiate the

claims made by the Debtor, and to permit Trustee to review documents that Debtor's attorney provided Trustee during the January 13, 2015 hearing.

SUMMARY OF TRUSTEE'S OBJECTION

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

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

1. Trustee is uncertain that Debtor can make the payments required under 11 U.S.C. § 1325(a)(6). Debtor has a \$23,535.86 post-petition liability to the Internal Revenue Service for 2013 taxes. Debtor does not provide any explanation regarding this post-petition liability. Debtor's Schedule J includes a \$1,000 monthly expense for self-employment taxes.
2. Debtor filed a Declaration in support of the Motion; however, it lacks sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). Debtor does not address the changes in income of the non-filing spouse. The non-filing spouse's gross income decreased for \$7,691.02 at the time of filing to \$3,595.57 currently. The monthly net income decreased from \$3,161.51 to \$2,747.29.
3. Debtor added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of \$23,535.86. This creditor has not filed a claim for post-petition taxes and only the creditor has the ability to do so under 11 U.S.C. § 1305.

DEBTOR'S RESPONSE

Debtor responds to the trustee and offers the following:

1. Debtor states that when he filed bankruptcy in November 2013, he filed a plan that anticipated the tax liability and set aside \$1,000 to be paid quarterly to the Internal Revenue Service to prevent future post-petition tax liabilities. Debtor asserts that as of October 2014, he has made payments to the IRS of \$8,100.
2. Debtor attached the Declaration of Dianne Vazquez, his non-filing spouse. The Declaration explains that non-filing spouse attended the meeting of creditors and suffered a reduced income amount because her position with the local police force changed and decreased the available over-time pay.
3. The Internal Revenue Service is in the process of filing the 11 U.S.C. § 1305 claim.

Declaration of Ed Weedman in Support of Trustee's Objection

This declaration was filed on December 30, 2014. The Trustee reiterates that the Internal Revenue Service has not filed a claim for post-petition taxes, as provided for in the proposed plan.

On October 14, 2014, Debtor's non-filing spouse submitted a

declaration stating that her new position does not allow her to work eight hours of overtime per month. Overall, the Trustee calculated that from the time the petition was filed to the October 14, 2014, the overall reduction in monthly income from the non-filing spouse totals \$414.22. However, Debtor has still had not provided any supporting evidence, such as paystubs, to the Trustee.

Debtor's Supplemental Response

Debtor filed a supplemental response on January 6, 2014. Debtor states that he has provided the payroll records for his non-filing spouse for November and December 2014 to the Trustee. Debtor asserts that the paystubs support that the income is consistent with gross income reported of \$3,426.18.

Trustee's Supplemental Declaration

On January 22, 2015, Trustee filed a declaration showing that he has received and examined the non-filing spouse's paystubs and compared them to Debtor's Schedule I.

DISCUSSION

On January 13, 2015, the court entered an order continuing the Motion to Confirm to February 10, 2015 to give the Internal Revenue Service time to file its claim for post-petition taxes and to ensure the paystubs Debtor provided to the Trustee adequately substantiate the claims made by the Debtor.

The docket reflects that On January 7, 2015, the Internal Revenue Service filed an amended proof of claim providing that post-petition taxes amount to \$37,038.41. (Claim No. 1).

The Trustee's objection regarding the non-filing spouse's paystubs has apparently been satisfied, as the Trustee has not stated objection to the paystubs in the January 22, 2015 supplemental declaration. However, the Debtor's plan does not provide treatment for the Internal Revenue Service's amended claim of post-petition taxes of \$37,038.41, (Claim No. 1) and thus 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 to Confirm the Modified Chapter 13 Plan filed by the 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 Motion to Confirm the Modified Plan is denied and the plan is not confirmed.

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2015. 35 days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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. Debtor has filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan 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 January 7, 2015 is confirmed, and counsel for the Debtors 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.

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 14, 2015. Twenty-eight days' notice is required. This requirement has been met.

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

Debtors' third amended plan was confirmed on January 13, 2015. The third amended plan calls for payment into the plan of litigation proceeds in the sum of \$48,400. The litigation settlement grossed \$75,000, comprised of \$70,000 in the main action by Stewart Katz, Esq., and \$5,000 in an ancillary worker's compensation case by John Timmon, Esq. Of the \$75,000 the Debtors are requesting an order that funds, held in Stewart Katz's attorney trust account, be distributed as follows:

1. \$48,400 to Trustee to be distributed to claimants in accordance with the confirmed plan and filed claims.
2. \$14,000 in attorney's fees to Stewart Katz, Esq., appointed by this court by ex parte motion on April 23, 2013. Debtors assert that fees were considered in the ruling on the motion to approve the compromise.
3. \$750 in attorney's fees to John Timmons, Esq., for ancillary work performed in the worker's compensation case grossing \$5,000.
4. \$11,850 in exemptions to the Debtors as determined through Trustee's motion heard October 28, 2014.

TRUSTEE'S RESPONSE

Chapter 13 Trustee is not opposed to the motion and requests that

the court grant the Debtor's motion.

The court find the motion and Movant's requests reasonable, and 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 Distribute Funds filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and funds be distributed as requested.

Tentative Ruling: The Motion to Sell Property 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 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*), Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 20, 2015. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

The Motion to Sell Property 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 -----
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The Motion to Sell Property is denied without prejudice.

The instant Motion to Sell seeks an order granting authorization to sell Debtors' property, providing:

1. Movant proposes to sell the "Property" described as 8049 Lomand Court, Sacramento, California.
2. The proposed purchaser of the Property is Jose Vallejo and the terms of the sale are for the purchase price of \$205,000 via short sale.
3. Home is currently encumbered by two liens: (1) \$29,2578.28 held by Wells Fargo Home Mortgage; (2) \$54,750 held by Wells Fargo Home Mortgage.
4. Motion for relief was granted in favor of Wells Fargo on May 15,

2012.

5. The real estate broker and a copy of the proposed purchase agreement and joint escrow instructions.

TRUSTEE'S RESPONSE

Trustee provides that he is not opposed to the sale. However, Debtors have not provided a closing statement and Trustee is unable to determine if the Debtors will receive funds from the sale. Debtors have also failed to disclose whether the sale is an "arm's length" transaction. Where short sale results in a loss to Wells Fargo in excess of \$140,000 and no agreement from Wells Fargo for the short sale has been provided.

DISCUSSION

The Motion to Sell does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely provides the above listed facts.

However, merely reciting bare-bones facts to the court is not sufficient; Movant has not pointed to any legal authority or provision of the Bankruptcy Code that would permit the Debtors in Possession to sell the property. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g).

Furthermore, the court is unable to determine from Debtors' motion if the Debtors will receive funds from the sale, whether the sale is an "arm's length" transaction., and where the short sale results in a loss to Wells Fargo in excess of \$140,000, whether Wells Fargo agrees to the short sale.

Based on the Motion's failure to conform to the requirements of Federal Rule of Bankruptcy Procedure 9013, and based on concerns raised by Chapter 13 Trustee, the Motion is denied without prejudice.

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

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

The Motion to Sell Property filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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 January 14, 2015. Fourteen days' notice is required. This requirement has been met.

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

Chapter 13 Trustee opposes confirmation of the plan on the basis that:

1. Debtor has not paid all sums or fees required by the plan. 11 U.S.C. § 1325(a)(2). Debtor is \$2,715 delinquent in Plan payments to the Trustee to date and the net schedule payment of \$2,715 was due on January 25, 2015. Debtor has paid \$0 into the Plan to date.
2. Debtor did not provide Trustee with a tax transcript or copy of his/net Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor has not provided the Trustee with his/her Employer Payment Advices received 60 days prior to filing. 11 U.S.C. § 521(a)(1)(B)(iv).
4. Debtor did not appear at the First Meeting of Creditors held on January 8, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting was continued to March 5, 2015.
5. Debtor's plan does not provide a dividend to general unsecured creditors in section 2.15.
6. Debtor's plan may not be proposed in good faith under 11 U.S.C. § 1325(a)(3), and has not proven that the petition was filed in good faith under 11 U.S.C. § 1325(a)(7). While Debtor disclosed two prior filings on the petition, Debtor has not explained what happened during those two prior Chapter 13 cases (both terminated in 2010 without discharge), or why the present case as proposed will work when the previous two did not.
7. Debtor's plan does not provide how Debtor will be able to make all payments under the plan. 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Schedule J reflects \$451.88 and Debtor is proposing plan payments of \$2,715.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

6. [13-31739](#)-C-13 RODERICK DEAL
SDB-4 Scott de Bie

MOTION TO APPROVE LOAN
MODIFICATION
1-8-15 [[82](#)]

Final Ruling: No appearance at the February 10, 2015 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, and Office of the United States Trustee on January 8, 2015. Twenty-eight days' notice is required. That requirement was met.

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 Roderick Christopher Deal ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo, 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 \$2,270 a month to \$1,428 a month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 4.5% over the next 30 years.

The Motion is supported by the Declaration of Roderick Christopher Deal. 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.

TRUSTEE'S RESPONSE

Chapter 13 Trustee has filed a statement of non-opposition.

DISCUSSION

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the

Federal Rules of Bankruptcy Procedure.

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

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

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

The Motion to Approve the Loan Modification filed by Debtor, Roderick Christopher Deal, 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 Roderick Christopher Deal ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A. which is secured by the real property commonly known as 7508 King Leopold Court, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 85.

7. [11-26545](#)-B-13 MICHAEL BARNETT
JPJ-2 John Tosney

CONTINUED OBJECTION TO CLAIM OF
WELLS FARGO HOME MORTGAGE,
CLAIM NUMBER 5
12-9-14 [[89](#)]

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Debtor, Creditors, and Office of the United States Trustee on December 9, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Claim of Wells Fargo Home Mortgage is sustained.

Jan Johnson, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Wells Fargo Home Mortgage ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$247,720. Objector asserts that the claim was filed after the date set for filing claims pursuant to Fed. R. Bankr. P. 3002(c).

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

The deadline for filing a Proof of Claim in this matter was July 7, 2011. This claim was filed on October 20, 2014.

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

The court shall 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 Home Mortgage, Creditor filed in this case by 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 the objection to Proof of Claim Number 5 of Wells Fargo Home Mortgage is sustained and the claim is disallowed in its entirety.

8. [12-37461](#)-C-13 DALE RICH
ASW-1 Michael Croddy

MOTION TO RESTRICT OR REDACT
PUBLIC ACCESS RE CLAIM #16
1-8-15 [[47](#)]

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 8, 2015. Twenty-eight days' notice is required.

The Motion to Restrict or Redact Public Access 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 Redact and Restrict Public Access to Consumer Information is granted.

Creditor, JPMorgan Chase Bank, N.A., moves for an entry of an order (1) directing the Clerk of the Court to restrict remote electronic access to the Filing to protect certain personally identifiable information and (2) authorizing Chase to make a Replacement Filing. See 11 U.S.C. § 105(a) and 107(c) (providing that "the bankruptcy court, for cause, may protect an individual . . . to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property.").

Creditor believed that sensitive personally identifiable information had been redacted in compliance with Bankruptcy Rule 9037 prior to docketing the filing of Proof of Claim No. 16, and having discovered that that information has not been redacted, now seeks the court's permission to limit access to the document. See Fed. R. Bankr. P. 9037(d) (2) (providing that "[f]or cause, the court may by order in a case under the Code . . . limit or prohibit a nonparty's remote electronic access to a document filed with the court."). While Creditor is not aware of any instance in which the personally identifiable information in the filing has been misused, Creditor is taking preemptive steps to reduce potential exposure by permanently restricting access to the filing and by refileing a redacted document.

Creditor seeks: (1) that access to the original filing Proof of Claim No. 16 be restricted to protect any personally identifiable information, with access to the filing available upon request in person or by writing address to

the Clerk of the Court's office to the U.S. Trustee for Region 17, the designated person(s) whose sensitive information was imperfectly redacted, counsel for the designated person, and the respective private trustee appointed to serve in that capacity in the designated person's bankruptcy; and (2) permission to file a replacement filing in the form of an amended proof of claim, which would be substantively identical to the original filing in all respect except for the removal of any imperfectly redacted personally identifiable information, deemed to have been filed on the date of the original filing.

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 Restrict and Redact Public Access filed by Creditor, JPMorgan Chase Bank, N.A. 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, access to Proof of Claim No. 16 is restricted and Movant may file an amended Proof of Claim.

NO TENTATIVE RULING: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor's proposed modified plan, section 6.01 indicates \$13,376.80 in post petition arrears was due as of January 2, 2015. Trustee calculates that as of January 2, 2015, post-petition arrears were actually \$10,701.44, which consists of a principal due of \$8,06.08 in ongoing mortgage payments and 1 month of post-petition arrears in the amount of \$2,675.36 in Class 1 per Section 6.02 of the confirmed plan.
2. Debtor has provided conflicting information regarding treatment of Santander Consumer USA claim, 2010 Honda Accord. Debtor's plan filed September 3, 2013 (Dkt. 9) classified this creditor as a class 4 secured claim with a monthly contract installment of \$433.27. Debtor's Schedule J filed

September 5, 2013 (Dkt. 14) budgeted \$433.27 monthly payments. Debtor's confirmed modified plan filed on December 17, 2013 (Dkt. 55) reclassified this claim to Class 3 Surrender and Debtor's Projected Budget, Income and Expenses, reducing the monthly auto installment to \$0. Debtor's proposed modified plan continues to classify this claim as Class 3 Surrender claim, but Debtor's Supplemental Schedule budgets \$0.01 for installment payments and now states, "Husband paid off the car with retirement."

DEBTOR'S RESPONSE

Debtor responds to the Trustee, stating:

1. Post-Petition arrears are correctly stated by the plan. The figure stated by Trustee (\$10,701.44) does not take into account the sum stated by the Court's order (Dkt. 7). The order provides, "If a contract installment payment on a claim of the type described in 11 U.S.C. § 1326(a)(1)(c) first falls due after the petition is filed and during the first calendar month of the case, the debtor shall make the adequate protection payment proposed in the plan directly to the claim holder." As applied to this issue, post-petition arrears of \$2,675.36 were due for the installment to First Mortgage Corporation for September 1, 2013. Thus, \$10,701.44 and \$2,675.36 amount to \$13,376.80, as stated in the plan.
2. The secured claim of Santander Consumer USA is correctly classified in Class 3. The reason for reclassifying this claim to Class 3 on the December 17, 2013 modified plan is that at the time, Debtor's husband's intention was to surrender the car. Debtor's husband has since paid off the car loan with his retirement money. In the instant modified plan, this line 17c, page 5 of Document 17 should have been left blank.

The court is unsure as to the status of this case, and will take up the matter in open session.

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 Modified 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 . . .

Tentative Ruling: The Motion to Dismiss 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, and Office of the United States Trustee on January 27, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Dismiss 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 court's decision is to deny the Motion to Dismiss and the case is not dismissed.

Creditor, Robert Guerra, seeks dismissal of Debtor's case based on the following:

1. Debtors' failure to confirm a Chapter 13 plan has cause unreasonable delay that is prejudicial to Creditor. 11 U.S.C. § 1307(c)(1). Creditor is the largest unsecured creditor of the estate with a \$125,000 plus judgment which is non-dischargeable under 11 U.S.C. § 523(a)(2). Creditor asserts that Debtors have filed two bankruptcy cases (including the instant one) in order to avoid debt payment to Creditor. Creditor is a pensioner who has receive little in payment of his non-dischargeable judgment against Debtors. Debtors' bankruptcy filings and failure to submit a confirmable bankruptcy plan have been cause highly prejudicial delays to him.
 - a. Creditor obtained a non-dischargeable judgment against Debtors

from the Bankruptcy Court of the Central District of California (Adversary Case No. 97-01766). Creditor asserts that when each of the bankruptcy cases was filed, a wage garnishment was in place against Debtors.

- b. The Debtors filed a previous Chapter 13 bankruptcy case in October of 2012, in which the Debtors' proposed plan paid unsecured creditors no money and sought to discharge Creditor's non-dischargeable debt. Creditor objected and Debtors filed an amended Chapter 13 plan paying a de minimis dividend over five years and excepting Creditor's claim from discharge. Creditor again objected to the amended plan and filed a motion to dismiss on the grounds that Debtors were ineligible for Chapter 13 by reason of having too much debt to qualify. Debtors then converted their prior case to Chapter 7.
- c. The instant Chapter 13 bankruptcy was filed by Debtors on July 22, 2014. The initial plan and amended plan in the instant action sought to pay Creditor little to no monies. Creditor filed objections to both plans on the basis that they were not filed in good faith and failed to include all of Debtors' disposable income. Both proposed plans have been denied by the court to date. Debtors have not submitted any further amended plans that may be confirmable.

DEBTORS' RESPONSE

Debtors respond that they have been prosecuting their case in good faith, pointing out that they are current on fees and payments, have paid over \$30,000 into the plan to date, and only require confirmation of a plan for Trustee to begin distributing funds.

Debtors point out that after filing this case on July 22, 2014, Debtors disclosed receiving a post-petition raise, and incorporated all changes in a First Amended Chapter 13 plan and motion to confirm on November 11, 2014. By the confirmation hearing on January 13, 2015, Debtors had satisfactorily resolved objections from Trustee and Creditor Wells Fargo Bank, N.A., each willing to set forth the resolution in the order confirming the plan. The only objection outstanding as of January 13, 2015 was that of Creditor-Movant, Robert Guerra.

Debtors also point out that this is Creditor's second motion to dismiss, as they were successful in defeating Movant's first motion to dismiss on December 3, 2014.

Debtors filed a second amended plan on February 5, 2015 addressing the Creditor-Movant's above concerns and have set the confirmation of that plan for March 24, 2015.

DISCUSSION

The court is satisfied that Debtors are adequately prosecuting their Chapter 13 case, and have been working to resolve Trustee's and creditor objections in good faith. The motion is denied and the case is not dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11. [14-31381](#)-C-13 KATHRYN BROWN
DPC-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
1-14-15 [[18](#)]

Also #12

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 January 14, 2015. Fourteen days' notice is required. This requirement has been met.

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

The court's decision is to sustain the Objection.

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

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of First Tech Federal Credit Union. Debtor has not filed such motion, and the Creditor has objected to confirmation.

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

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

12. [14-31381](#)-C-13 KATHRYN BROWN
PD-1 Gary Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY FIRST TECH FEDERAL
CREDIT UNION
1-5-15 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 5, 2015. Fourteen days' notice is required. This requirement has been met.

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

The court's decision is to sustain the Objection.

Creditor, First Tech Federal Credit Union, opposes confirmation of the Plan on the basis that:

1. Debtor's Chapter 13 Plan does not properly provide for Creditor's claim (Proof of Claim No. 1).
 - a. Debtor's claim proposes to reduce the Creditor's claim below the replacement value of the vehicle. More specifically, Debtor's plan proposes to reduce the secured portion of Creditor's claim to \$6,100, which she alleges is the value of the vehicle without supporting evidence. On December 15, 2014, Creditor filed its proof of claim (Proof of Claim No. 1). The total amount of Creditor's claim is \$14,308.20 and the total approximate value of the Vehicle securing the

claim is \$13,308, based on the Kelley Blue Book Vehicle Valuation.

- b. Debtor's plan attempts to reduce the interest rate paid on the Creditor's claim without implementing the prime-plus formula. Debtor proposes an interest rate on Creditor's secured claim of 4.5%. Creditor submits that the appropriate interest on its secured claim should be no less than 7.25%, based on the current national prime rate of 3.25% and a risk adjustment of 4%.

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, First Tech Federal Credit Union, 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. [14-32092](#)-C-13 NATHAN/MELANIE ROBINSON MOTION TO VALUE COLLATERAL OF
MET-1 Mary Ellen Terranella AMERICREDIT FINANCIAL SERVICES,
INC.
1-25-15 [[15](#)]

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 Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 25, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Americredit Financial Services, Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2008 4-Door Honda Accord Sedan. The Debtor seeks to value the property at a replacement value of \$10,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2010, more than 910 days prior to the filing of the petition, with a balance of approximately \$12,246.29. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the

amount of \$10,000. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Americredit Financial Services, Inc. secured by a 2008 Honda Accord, is determined to be a secured claim in the amount of \$10,000, 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 \$10,000 and is encumbered by liens securing claims which exceed the value of the Property.

Tentative Ruling: The Motion to Extend 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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 26, 2015. Fourteen days' notice is required. That requirement was met.

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.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-27371) was filed on July 18, 2014 and dismissed in September of 2014, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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 Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 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's purpose in filing his previous plan as well as the instant plan was and is in efforts to save his home and cure the arrears on that debt. Debtor was previously represented by an attorney by the name of Stephen C. Lyons. Debtor does not feel that Mr. Lyons represented his interests very diligently, and during the two months that Debtor's previous case was pending, Debtor attempted to prevent his case from being dismissed. Debtor placed numerous calls to Mr. Lyons with no response, and ultimately the previous case was dismissed due to Debtor's inability to obtain proper cooperation from his counsel. Debtor asserts that the Creditor, Wells Fargo Bank, N.A. will not suffer prejudice because California's Homeowner's Bill of Rights and relevant case law prohibit foreclosure at this juncture, and that his newly submitted Chapter 13 plan provides a budget showing his ability to cure the arrears on his debt.

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

15. [11-26750](#)-B-13 REMIGIO/MARILYN BERNAL
SDB-3

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO BANK,
N.A.
1-5-15 [[67](#)]

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 5, 2015. Twenty-eight days' notice is required. This requirement has been met.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 269 Darley Drive, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$304,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$399,000. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$46,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The 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 Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A., secured by a second deed of trust recorded against the real property commonly known as 269 Darley Drive, Vallejo, 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 \$304,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 5, 2015. Twenty-eight days' notice is required. This requirement has been met.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 100 Rodeo Court, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$180,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$351,359.75. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$126,879.47. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The 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 Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 100 Rodeo Court, Vallejo, 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 \$180,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

17. [10-24351](#)-C-13 ROBERT/MICHELLE REID
[12-2392](#)
REID ET AL V. BANK OF AMERICA,
N.A. ET AL

MOTION FOR JUDGMENT ON THE
PLEADINGS
1-5-15 [[108](#)]

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

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

The Motion for Judgment on the Pleadings denied.

Motion by Defendants Wells Fargo Bank, N.A. and Nationstar Mortgage, LLC

The motion filed by Wells Fargo Bank, N.A. and Nationstar Mortgage, LLC ("Defendants") is made upon Rule 12(c) of the Federal Rules of Civil Procedure, and is based on the ground that Plaintiffs fail to state a claim upon which relief may be granted and the complaint is barred as a matter of law against Defendants.

Defendants assert that Plaintiffs' Claims against Defendants are barred by judicial estoppel for failing to disclose damages claims to the bankruptcy court. According to Defendants, Plaintiffs' September 29, 2014 second amended complaint seeks numerous damages - including RESPA damages, punitive damages, and actual damages - which plaintiffs should have scheduled. Defendants argue that Plaintiffs cannot now bring these damages claims against Wells Fargo and Nationstar, having previously stated that they had no claims in statements that were relied on by parties to the bankruptcy, the bankruptcy court itself, and the bankruptcy trustee.

Defendant's address Plaintiff's Claims as follows:

i) The First Claim for Violation of the Automatic Stay - There is no alleged violation of the automatic stay as to Wells Fargo and Nationstar, and Plaintiffs do not present facts as to the "malicious" or "reckless" behavior that could warrant an award of punitive damages.

ii) The Second Claim for Objection to Claim and Violation of Bankruptcy Rules 3001, 3002.1 and 3007 - Plaintiffs' second claim alleges plaintiffs are being charged improper fees, including bankruptcy fees, foreclosure fees, and other fees. However, like the other claims in the Second Amended Complaint, plaintiffs fail to differentiate between the purported actions of the Defendants, and no facts are presented as to Nationstar or Wells Fargo. Specifically, plaintiffs fail to allege how Wells Fargo or Nationstar violated the Bankruptcy Rules, and also fail to allege how Wells Fargo or Nationstar's purported actions actually constitute a cause of action.

Additionally, plaintiffs fail to allege whether there even exists a private right of action under Bankruptcy Rules 30014, 3002.1, and 3007. Rule 3001 outlines the procedures for filing a proof of claim, but plaintiffs fail to present any facts as to how Wells Fargo or Nationstar violated this rule, or whether there are any recoverable damages for an alleged violation of Rule 3001 (although Rule 3001(D) (i) (ii) does allow for fees).

iii) The Third Claim for Good Faith & Fair Dealing, Breach of Contract, Breach of Chapter 13 Plan - Plaintiffs cannot state any claim for breach of the implied covenant of good faith and fair dealing, breach of contract, or "breach of Chapter 13 Plan." Also Plaintiffs fail to allege how movants breached any contract with them. Finally, plaintiffs attempt to bring a claim for a breach of the Chapter 13 plan, even though there is no such cause of action.

iv) The Fourth Claim for The Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq. - Plaintiffs fail to sufficiently plead a violation of the Real Estate Settlement Procedures Act (RESPA) against Wells Fargo and Nationstar. Plaintiffs' RESPA claim is wholly devoid of any factual detail. Plaintiffs fail to allege what request was purportedly sent to movants, when the alleged request was made, and how movants' alleged "partial answers" violated any provision of the Real Estate Settlement Procedures Act.

Defendants request that the Court grant their motion for judgment on the pleadings without leave to amend.

Plaintiffs' Response

Robert and Michelle Reid ("Plaintiffs") assert that the Defendants' motion includes numerous procedural defects and, on the merits of the motion, the Defendants' argument for judicial estoppel is frivolous since this cause of action arose after the filing of the Plaintiffs' Chapter 13 case. Plaintiffs also assert that Defendants' Motion for Judgment on the Pleadings is, in substance, a Motion for Summary Judgment.

Plaintiffs urge the Court to grant partial summary judgment in favor of Plaintiffs, or enter an order establishing material facts as set forth in Plaintiffs' Second Amended Complaint.

Bank of America, N.A.'s Reply to Plaintiffs' Response

Bank of America, N.A. filed a joinder to Wells Fargo and Nationstar's Motion for Judgment on the Pleadings on January 28, 2015 (Dkt. 114).

Bank of America asserts that Plaintiffs improperly seek affirmative relief in an *opposition* to the Motion. Such relief must be sought through a *motion* under Local Rules 9014-1 and 7056-1, and Rule 56 of the Federal Rules of Civil Procedure. If Plaintiffs seek summary judgment - partial or otherwise - and in doing so seek establishment of material facts, Plaintiffs should be required to follow applicable rules and file a motion to allow parties to this case a fair opportunity to object and otherwise be heard.

Bank of America also asserts that Plaintiffs appear to attempt to distract the court from the fact that discovery re-opened in this case on January 26, 2015.

Additionally, Bank of America opposes all affirmative relief sought by the Plaintiffs, including any relief for summary judgment, and opposes establishing material facts as set forth in the Second Amended Complaint.

Defendants' Reply in Support of its Motion

Defendants' argue that Plaintiffs' request that the Motion for Judgment on the Pleadings be transformed into a Motion for Summary Judgment is improper and without legal basis. Defendants assert that, aside from the notice of transfer of servicing, all other documents in the Request for Judicial Notice filed in support of the Motion for Judgment on the Pleadings are recorded documents or are otherwise public records. As such, a district court may consider public records or other matters outside of the complaint of which it would be proper to take judicial notice, without converting the motion to one for summary judgment.

In any event, Defendants assert that Plaintiffs fail to articulate a single cognizable theory to support the allegations raised against Defendants in their Second Amended Complaint ("SAC") as the allegations in the SAC are directed against Bank of America, and focus on Bank of America's purported violation of the automatic stay. Defendants argue that Plaintiffs fail to even allege claims against Wells Fargo and Nationstar, let alone present any facts as to how Wells Fargo and Nationstar are liable. Defendants assert that Plaintiffs' opposition fails to address the many pleading deficiencies in the SAC.

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

The Motion for Judgment on the Pleadings by Defendants Wells Fargo Bank, N.A. and Nationstar Mortgage, LLC, 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.

IT IS FURTHER ORDERED that Plaintiffs' request for partial summary judgment and an order establishing material facts as set forth in Plaintiffs' Second Amended Complaint are denied.