UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 10, 2015 at 3:00 p.m.

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1. 15-20001-E-13 JOSE/ESMERALDA GIL — OBJECTION TO CONFIRMATION OF PLAN BY A1B2, LLC
NBL-1 — Scott D. Hughes — 2-11-15 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 11, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

A1B2, LLC ("Creditor") opposes confirmation of the Plan on the basis that

the plan does not provide the full pre-petition arrearage amount.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $61,035.37 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The Creditor's objections are well-taken. 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 A1B2, 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

2. 14-32002-E-13 SJS-1 KAO SAECHAO AND MYHANH NGUYEN Scott J. Sagaria

MOTION TO CONFIRM PLAN 1-26-15 [21]

Final Ruling: No appearance at the March 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, all creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 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 creditors. The Chapter 13 Trustee filed a non-opposition. 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 January 26, 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.

3. 13-28203-E-13 JB-2 LANCE/LISA MCKINNEY Jason Borg MOTION TO MODIFY PLAN 1-20-15 [62]

Final Ruling: No appearance at the March 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 20, 2015. By the court's calculation, 49 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 creditors. The Chapter 13 Trustee filed a non-opposition. 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 20, 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.

4. 15-20008-E-13 DPC-1 VICTOR ABRIAM Susan B. Terrado

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 2-11-15 [21]

Final Ruling: No appearance at the March 10, 2015 hearing is required
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The Objection is dismissed as moot, the Debtor having filed a Second Amended Chapter 13 Plan and Motion to Confirm.

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

1.Plan not signed by attorney

2.Plan not properly signed by the Debtor.

3.It appears that the Debtor cannot make the payments required, under 11 U.S.C. § 1325(a)(6). The Debtor's budget does not appear sufficient for maintenance and support of the Debtor or the Debtor's dependents.

DEBTOR'S RESPONSE

The Debtor filed a response on March 2, 2015. Dckt. 29. The Debtor states that he has filed a second Amended Chapter 13 Plan and Motion to Confirm on March 2, 2015. Dckt. 28 and 30.

The Debtor requests that the objection be dismissed as moot as there is a second Amended Chapter 13 Plan and Motion to Confirm pending.

DISCUSSION

A review of the docket showing that the Debtor has filed a second Amended Plan and an accompanying Motion to Confirm. With a second Amended Plan and Motion to Confirm pending hearing, the Objection 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 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 is dismissed as moot, the Debtor having filed a Second Amended Chapter 13 Plan and Motion to Confirm.

5. 14-22518-E-13 SDH-2 BETTE HIMMELMANN Scott D. Hughes

OBJECTION TO CLAIM OF AMERICAN EXPRESS BANK, FSB, CLAIM NUMBER 1
1-21-15 [43]

Final Ruling: No appearance at the March 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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 48 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 1 of American Express Bank, FSB is sustained and the claim is disallowed in its entirety.

Bette Himmelmann ("Debtor") requests that the court disallow the claim of American Express Bank, FSB ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,162.78. Debtor asserts that the Statute of Limitations on

the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. The Debtor states that according to the Proof of Claim, the date of last payment was March of 2008.

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).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

A review of Proof of Claim No. 1 shows that the Debtor's last payment date was March 2008 and the last transaction date was June 2003. There is no evidence that the Creditor has attempted to commence an action within the four years since March 2008, the latest activity on the account. Under California Code of Civil Procedure § 337, the statute of limitations had run for commencing an action on March 2012. The Creditor's Proof of Claim was filed on June 25, 2014, over two years after the expiration of the statute of limitations.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of American Express Bank, FSB, Creditor filed in this case by Bette Himmelmann, 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 1 of American Express Bank, FSB is sustained and the claim is

disallowed in its entirety.

6. 14-21319-E-13 MARK/SARAH ANN HANSEN — MOTION TO CONFIRM PLAN
BB-6 Bonnie Baker — 1-20-15 [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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 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.

Mark and Sarah Ann Hansen ("Debtors") filed the instant Motion to Confirm the Amended Plan on January 20, 2015. Dckt. 77.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 20, 2015. Dckt. 94. The Trustee objects on the following grounds:

1. The Additional Provisions of the Debtors' Plan are incorrect. The Additional Provisions call for the following: "The debtors have paid the trustee a total of $29,220.00 through December 2014, paying the ongoing Class 1 mortgage payments and trustee fees. Commencing July 2014 the debtors shall pay the trustee $3,908.00 through February 2015, paying the ongoing mortgage,

and trustee fees." The plan payments of $3,909.00 should commence on January 2015, not July 2014.

2. The plan relies on pending motion. The Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of Cornerstone Bank which is set for hearing on February 24, 2015. If the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

3. The Debtors cannot make the payments as required under 11 U.S.C. § 1325(a)(6). The Debtors' Plan proposes to increase plan payments from $3,909.00 to $4,814.00 in March 2015 for 12 months, then, $6,196.05 for 36 months.

The Debtor is an independent contractor for All Phase Construction and according to the Debtors' declaration in support of this motion, "he anticipates that his income will increase as the economy continues to expand. How quickly or exactly when I will receive additional income is unknown."

"Finally, my son's product's liability lawsuit should conclude in 2016. At that time, he will be able to reimburse us for the 24 hours care we have provided to him if necessary which will also reduce our expenses/increase our income and allow us to make an increased plan payment to cover the final plan payment increase of $6,196.00 per month."

It appears that the increase in plan payments is from anticipated income, and the Debtors has failed to provide any evidence of the increase or information concerning their song's product's liability lawsuit.

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 Trustee's first objection appears to be a mere scrivener's error that could have been corrected in the order confirming the plan. However, the Trustee's remaining objections raise serious concerns on the viability of the proposed plan.

The proposed Plan does rely on the Motion to Value Collateral of Cornerstone Bank. The court continued the hearing on the Motion to Value to March 24, 2015 at 3:00 p.m. to allow the Debtor and creditor to complete negotiations on an agreed value for the secured claim. Dckt. 97.

The Trustee's third objection raises serious concerns about whether the proposed plan payments are possible given the fact that the Debtors are basing the plan on speculative increases in income. As stated in the Debtors' declaration, the Debtors expect that Debtor Mark Hansen's income will increase merely because of the economy improving. This is not a persuasive as to justify the proposed increase in plan payments. Furthermore, the Debtors state that the increased plan payments are justified given the possible reimbursement from the Debtors' son. Once again, this is too speculative in nature to satisfy the

feasibility requirement of 11 U.S.C. § 1325. The Debtors are basing their plan on two highly speculative increases in income which may or may not come to volition. Without a guarantee of these funds, the current Schedule I and J of the Debtors do not support the proposed plan.

While the court would normally continue the hearing to March 24, 2015 to be heard with the Motion to Value Collateral, the concerns over the feasibility of the plan based on the possible, but not guaranteed, increases in income is an independent ground to deny confirmation.

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.

7. 14-32528-E-13 SHELLEY HUSEN
DL-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY SACRAMENTO MUNICIPAL UTILITY DISTRICT
2-12-15 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 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. At the hearing ----------.

The court's decision is to sustain the Objection.

Sacramento Municipal Utility District ("SMUD") opposes confirmation of the Plan on the basis that the plan decreases the amount of the interest rate such that the value of plan payments would be less than allowed amount of SMUD's claim in violation of 11 U.S.C. § 1325(a)(5)(B)(ii). Specifically, the Plan proposes a 0% interest rate as to SMUD's secured claim in violation of Till.

SMUD filed Proof of Claim No. 3 on February 6, 2015 with a secured amount of $5,699.34. SMUD argues that in order to determine the interest rate to provide for the value of the claim as of the effective date of the plan, the court uses a formula approach set forth in *Till v. SCS Credit Corp*, 541 U.S.

465 (2004). The court starts with the prime rate of interest and adds an appropriate risk adjustment. In this case, the Plan provides for an interest rate of 0%. The prime rate as of the effective date of the Plan was 3.25%. Because the plan fails to provide for an interest rate it necessarily fails to provide for the value of SMUD's secured claim in violation of 11 U.S.C. § 1325(a)(5).

SMUD's objections are well-taken. 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.

Here, SMUD's claim is provided for in the plan. However, it does not provide for any interest that SMUD would have otherwise been entitled to. SMUD is correct in stating the *Till* requires that the Debtor provide for an interest rate to provide the value of the claim as of the effective date of the plan. The proper interest rate in this case would be at a minimum 3.25%. The Debtor proposes a 0% interest rate which does not provide for SMUD's claim in full, thus not complying with 11 U.S.C. § 1325(a)(5).

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 Sacramento Municipal Utility District 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.

8. 15-20632-E-13 JOSEPH/ROBI ROGERS — MOTION TO TRANSFER CASE
DPC-1 Douglas B. Jacobs — 2-19-15 [15]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Transfer 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.

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 Transfer is taken under submission, with the order to issued by the court without hearing.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Transfer Case Pursuant to Local Bankr. R. 1015-1(a)(b) on February 19, 2015. Dckt. 15.

The Trustee asserts that the instant case is one in a series of cases, where the first case was heard by Judge McManus and issues from the first case may predominate in the present case.

Local Bankr. R. 1015-1(a) allows for a party-in-interest to file a Notice of Related Cases, setting forth the title, number, and filing date of each related, together with a brief statement of the relationship.

The Trustee concedes that the Rule itself does not specifically authorize a motion to transfer the proceeding to a different judge, the Trustee believes that 28 U.S.C. § 1412 allowing for change of venue to another district may allow for such a motion.

The Debtors in the instant case are set for a Meeting of Creditors on March 12, 2015 at 10:30 a.m. in Redding, California. The Debtors have two prior cases and a pending adversary:

1. Case No: 12-39573

   a. Filed on November 6, 2012 as a Chapter 13.

   b. Assigned to Judge McManus and dismissed where Debtor never confirmed a plan and confirmation was last denied with a

finding that the Debtor was not being truthful and the bankruptcy was part of his efforts to defraud the objecting creditor, Bank of the West. Dckt. 19.

2. Case No: 14-29040

   a. Filed on September 8, 2014 as a Chapter 7.

   b. Assigned to Judge Klein and discharged, with a motion to avoid the lien of the Bank of the West set for hearing February 24, 2014. Dckt. 33.

3. Case No: 14-02335

   a. Filed on December 5, 2014 as a nondischargeability action under 11 U.S.C. § 523(a)(6) by Bank of the West and assigned to Judge Klein, set for pre-trial on June 24, 2015. Dckt. 19.

Bank of the West is not on the master address list in the instant case, not listed on Schedule D nor F. The Bank of the West is listed on the Statement of Financial Affairs, question 4, for breach of contract action only. However, the pending adversary does not appear noted on the petition should it be appropriate to so note. The proposed plan in the instant case proposes paying no less than 0% to unsecured claims. Dckt. 5.

APPLICABLE LAW

Local Bankr. R. 1015-1 provides, in relevant part:

> (a) Notice of Related Cases. When a case on file or about to be filed is related to another case that is pending or that was pending within the last eight (8) years, the debtor shall, and a party-in-interest may, file a Notice of Related Cases, setting forth the title, number, and filing date of each related case, together with a brief statement of the relationship.
>
> (b) Cases Deemed Related. Cases deemed to be related within the meaning of this Rule include the following fact situations:
>
> (1) The debtors in both cases are the same entity;
>
> (2) The debtors in both cases are husband and wife;
>
> (3) The debtors in both cases are partners;
>
> (4) The debtor in one case is a general partner or major shareholder of the debtor in the other case;
>
> (5) The debtors in both cases have the same partners or substantially the same shareholders; and
>
> (6) The cases are otherwise so related as to warrant being treated as related.

DISCUSSION

Bankruptcy cases filed in this District are assigned to judges without consideration of who is filing (except in situations where a disqualifying conflict is identified at the time of filing). Where a debtor files multiple cases, the court endeavors to have the subsequent cases assigned to a judge who had a prior case for the debtor avoid any appearance of multiple filings and dismissals being an effort to steer a case to a particular judge. Debtor accurately identified the prior filings on the Schedules.

There is an active, pending Chapter 7 case involving the Debtors and which includes an adversary proceedings to determine the nondischargeability of a debt. That case is assigned to the Hon. Christopher M. Klein. There were also proceeding conducted in the first Chapter 13 case which relate to the pending Adversary Proceeding.

After further review of the files and addressing this matter with the other involved judges, the court shall issue an order transferring this case to one of the judges to which a prior case was assigned.

9. 11-36333-E-13 MARK/DONNA BOWMAN MOTION TO MODIFY PLAN
RAC-1 Richard A. Chan 1-27-15 [35]

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 January 27, 2015. By the court's calculation, 42 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.

Mark and Donna Bowman ("Debtors") filed the instant Motion to Confirm the Modified Plan on January 27, 2015. Dckt. 35.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 24, 2015. Dckt. 41. The Trustee objects on the following grounds:

1. The Trustee is not sure the Debtors can afford proposed step up plan payment of $782.00 for months 50-60. The additional provisions of the modified plan lists proposed plan payments as: "As of Month 42: Debtors have paid a total of $16,800.00 into their plan. Trustee has $19.24 balance on hand, Months 43-49: Debtors propose to make a plan payment of $572.00 per month, Months 50-60: Debtors propose to make a plan payment of $782.00 per month." The Debtors filed an amended Schedule J (Dckt. 38) which reflects Debtors' monthly

net income of $572.00. The Debtors fail to address how or where the additional income will come from that is needed in months 50-60 of the plan to afford the step up payment.

2. The proposed modified plan no longer provides for priority creditor Internal Revenue Service. Under the confirmed plan, Internal Revenue Service was listed as Class 5 priority. According to the Trustee's records, Internal Revenue Service filed a priority claim on July 13, 2011 in the amount of $1,185.83 and that the priority claim has been paid in full.

DEBTORS' RESPONSE

The Debtors filed a response to the Trustee's objection on February 25, 2015. Dckt. 44. The Debtors respond as follows:

1. Debtors will be able to afford the step up plan payment of $782.00 as the remaining Class 4 401k loan will mature. In the original filed plan, the additional provisions provided for a $210.00 step up for months 50-60 as the last Class 4 401k loan would mature. The modified plan failed to include this same language.

2. Debtors propose to include language in the order confirming that the claim of the Internal Revenue Service shall remain a Class 5 Claim in Debtors' modified plan.

DISCUSSION

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

It appears that the Debtors' response has satisfied the Trustee's objections. First, the step up payments appear to be feasible at the completion of the Class 4 401k loan repayments. As seen in the order confirming the original plan, the plan provided for the same step up in months 60 through 60 at $782.00. The Debtors admit to failing to add that the step up is due to the completion of the payment of the Class 4 401k loans. Since this is a mere scrivener's error, it can be corrected in the order confirming and therefore the objection is overruled.

Secondly, the exclusion of the Internal Revenue Service priority claim seems to be due to the Debtors improperly believing it did not need to be listed in Class 5 because it was paid in full. This also appearing to be a mere scrivener's error that can be corrected in the order confirming, the objection is overruled.

Therefore, after the Debtors add the Internal Revenue Service priority claim to Class 5 and add the language concerning the step up being possible due to the completion of the 401k loan repayment, 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 27, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correctly listing the Internal Revenue Service priority claim in Class 5 and providing explanation that the step up in plan payments in months 50-60 is feasible due to the payoff of the Class 4 401k loans, 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. 14-30035-E-13 GUSTAVO DIAZ-ISLAS MOTION TO CONFIRM PLAN
CBS-2 Chaland B. Scrivner 1-25-15 [48]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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.

Gustabo Diza-Islas ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 25, 2015. Dckt. 48.

DEUTSCHE BANK NATIONAL TRUST COMPANY'S OBJECTION

Deutsche Bank National Trust Company, as trustee on behalf of the Certificate Holders of Morgan Stanley ABS Capital I Inc. Trust 2003-NC10, Mortgage Pass-Through Certificates, Series 2003-NC10, its assignees and/or successors, by and through its servicing agent Select Portfolio Servicing, Inc. ("Creditor") filed an objection to the instant Motion on February 18, 2015. Dckt. 55. The Creditor objects to the plan on the basis that the Plan does not propose to cure the Creditor's pre-petition arrearages.

The Creditor states that the plan alleges that Creditor is owed $62,000.00 in pre-petition arrearages when the Creditor is owed $69,436.65 in pre-petition arrearages as set forth in Proof of Claim No. 1.

Furthermore, the creditor states that the proposed plan calls for the payment of arrearages and post-petition mortgage payments after the sale or refinance of real estate held in Jalisco, Mexico within 8 months. The Creditor argues this cannot be guaranteed to timely occur nor at all. The Debtor has not provided any information on preparing to sell the property, how much would the property be listed for, the expected return on the sale, or the ability to repay the liens against the property.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 20, 2015. Dckt. 58. The Trustee objects on the following grounds:

1. The Debtor is $1,400.00 delinquent in plan payments. The Debtor's next payment of $1,400.00 is set for February 25, 2015. The Debtor has paid $2,800.00 into the plan to date.

2. The plan fails to provide a monthly dividend to pay the arrears of the Creditor, although the plan states that the arrears are to be cured within 8 months with proceeds from sale of Mexico Lot. The Plan fails to provide an amount to pay the Creditor's on-going mortgage payment.

3. The plan relies on a Motion to Value Collateral of Lighthouse Mortgage. If the motion to value is not granted the Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6).

This basis for the opposition has been resolved, the court filing its order valuing this secured claim to be $0.00 on March 4, 2015. Dckt. 63.

4. It appears that the plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). The Debtor is under the median income and proposes plan payments of $1,400.00 for 8 months, plus a lump sum of $80,000.00 and a 10% dividend to unsecured creditors, which totals $7,300.00. The plan term must be at least 36 months if the Debtor is not proposing to pay all debts in full at 100%.

5. It appears that the plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtor is married and his spouse is not included in the bankruptcy. The Debtor has failed to file a Spousal Waiver for use of the California state exemptions under California Code of Civil Procedure § 703.140. The Debtor's non-exempt equity totals $177,925.00 and the Debtor is proposing a 10% dividend to unsecured creditors, totaling $7,300.00.

6. The Trustee's prior objections have not been addressed which included:

a. The Debtor has failed to provide any specific information as to the sale of the Mexico. The plan lacks specificity as to the sale of the real property. The plan fails to provide a monthly dividend to the pay the Class 1 pre-petition mortgage arrears for 8 months, until the sale occurs.

b. The Debtor lists Portfolio Home Loan on Schedule D. However the Debtor fails to provide for this debt in the plan. Schedule D

states “Notice only,” and while treatment of all secured claims may not be required under 11 U.S.C. § 1324(a)(5), failure to provide the treatment could indicate that the Debtor either cannot afford the payments called for under the plan because they have additional debts or that the Debtor wants to conceal the proposed treatment of a creditor.

c. This case is the Debtor’s fifth bankruptcy filing within the past three years. The Debtor has not given sufficient evidence to show they will have the ability to make the plan payments and complete the plan where they have had four recent prior bankruptcies which were unsuccessful, 11 U.S.C. § 1325(a)(6). Case No. 11-33790 filed on June 1, 2011 and the Debtor received a discharge on September 19, 2011. Case No. 12-20014-13 filed on January 2, 2012 and the case was dismissed on March 21, 2012 for delinquency, no business documents provided and no motion to confirm filed. Case No. 12-28786-13 filed on May 6, 2012 and the case was dismissed on June 4, 2012 for no documents filed.

d. The Debtor’s prior case no. 12-31661-13 filed on June 21, 2012 fails to list the two real estate lots in Jalisco, Mexico. The Debtor has failed to explain why these lots were not originally listed on his schedules and when they were purchased.

DISCUSSION

The Trustee’s and Creditor’s objections are well-taken. A review of the instant case as well as the Debtor’s prior cases raises many questions concerning the Debtor’s candidness in the instant case and whether the Debtor can, in fact, make the proposed Plan payments.

The proposed Plan seems to, in part, rely on the proposed sale of the land in Mexico. However, as the Trustee points out, there is little to no information as to the means the Debtor intends to execute the sale. When the plan is dependent on the sale of real property, the Debtor must provide more information than just mere cursory description.

Additionally, 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, in conjunction with the Debtor being a repeat filer, this is reason to sustain the objection.

The First Amended Plan provides for monthly plan payments of $1,400.00, plus within eight months the Debtor is to generate monies from the sale of lots in Mexico. For the Class 1 and Class 2 claims, no distributions are made through the plan from the $1,400.00 a month payments. No payments are to be made to Debtor’s counsel through the Plan. No motion to value has been filed for the Lighthouse Mortgage claim.

For the Class 2 Claim of Lighthouse Mortgage is to be paid $0.00. Lighthouse Mortgage is not listed as a creditor having a claim on Schedule D. On Amended Schedule D the Debtor states that Lighthouse Mortgage has a 2nd Mortgage, but doesn’t identify the collateral. Dckt. 36. It appears that the Class 7 general unsecured claims provided for in the Amended Chapter 13 Plan

is for the Lighthouse Mortgage claim. The Amended Plan provides for a 10% dividend, which would total $7,300.00. However, the Debtor has scheduled real property in Mexico having a value of $200,000.00. Schedule A, Dckt. 14 at 1. Debtor has claimed an exemption of $22,000.00 in one of the Mexico Properties. Amended Schedule C, Dckt. 36 at 5. Assuming 10% for costs of sale, currency conversion, and other transactional costs, there appears to be $158,000.00 of value in the Mexico Properties to pay creditor claims. The value in these Mexico Properties (which were not disclosed in the prior bankruptcy cases) does not appear to be provided for in the First Amended Plan.

As to the Creditor's objection, the plan does not propose to cure all of the Creditor's pre-petition arrears. 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. Here, the Debtor has provided for the Creditor's claim but fails to provide for full payment of the pre-petition arrears. Therefore, the plan cannot be confirmed.

This plan seems very similar to the originally filed plan, barely addressing any of the court's and Trustee's original concerns. It appears apparent to this court that the proposed plan is not the Debtor's best effort and there are serious concerns over whether the Debtor is being fully up-front about his finances.

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.

11. 12-38436-E-13 NARAINAN/UMA NAIR
SJS-8 Scott J. Sagaria

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGARIA LAW, P.C. FOR SCOTT J. SAGARIA, DEBTORS' ATTORNEY
2-10-15 [103]

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

The Debtors having filed a Withdrawal of the Motion for Compensation (Dckt. 108), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Compensation was dismissed without prejudice, and the matter is removed from the calendar.**

12. 15-20336-E-13 ANTWANETTE RAYMOND
DEF-1 David Foyil

MOTION TO VALUE COLLATERAL OF KIA MOTORS FINANCE
2-5-15 [17]

Final Ruling: No appearance at the March 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Motion filed by Antwanette Raymond ("Debtor") to value the secured

claim of Kia Motors Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Kia Optima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $14,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 4, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $29,308.18. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $00.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Antwantte Raymond ("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 [name of creditor] ("Creditor") secured by an asset described as 2012 Kia Optima ("Vehicle") is determined to be a secured claim in the amount of $00.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $14,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

13. 14-32444-E-13 WALTER MATHISON **OBJECTION TO CONFIRMATION OF**
DPC-1 Pauldeep Bains **PLAN BY DAVID CUSICK**
2-11-15 [15]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Value Collateral.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor has failed to file a Motion to Value Collateral of Green Tree's Second Deed of Trust which was discharged in the Debtor's prior bankruptcy. The Trustee argues that the Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Objection on March 3, 2015. Dckt. 25. The Debtor states that the Debtor filed a Motion to Value Collateral of Bank of America, N.A. (2nd Deed of Trust) on March 2, 2015 which is set to be heard on April 14, 2015. Dckt. 19.

DISCUSSION

With the Debtor having filed a Motion to Value Collateral and the plan relying on the granting of that motion, the court continues the hearing to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Value Collateral.

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 April 14, 2015.

14. 09-42045-E-13 SS-3 MARK BLANKINSHIP Scott D. Shumaker

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 2-4-15 [54]

Final Ruling: No appearance at the March 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 34 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 Bank of America, N.A. ("Creditor") is granted [and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Mark Blankinship ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4777 Heatherbrae Circle, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $193,000.00 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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $288,769.00. Creditor's second deed of trust secures a claim with a balance of approximately $72,747.37. 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 Mark

Blankinship ("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 Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 4777 Heatherbrae 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 $193,000.00 and is encumbered by senior liens securing claims in the amount of $288,769.00, which exceeds the value of the Property which is subject to Creditor's lien.

15. 13-33751-E-13 SHEREE SOLOMON
MS-2 Mark Shmorgon
MOTION TO MODIFY PLAN
2-2-15 [30]

Final Ruling: No appearance at the March 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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 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 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 creditors. The Chapter 13 Trustee filed a non-opposition. 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 February 2, 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.

16. 14-29154-E-13 BSJ-1 GARY/CHERYL PETERSEN Brandon Scott Johnston

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
2-4-15 [39]

Final Ruling: No appearance at the March 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Americredit Financial Services, Inc. ("Creditor") is granted and the secured claim is determined to have a value of $22,040.96.

The Motion filed by Gary and Cheryl Petersen ("Debtor") to value the secured claim of Americredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Hyundai Genesis ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $17,200.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in December 4, 2013, which is less than 910 days prior to filing of the petition.

Movant is requesting that the loan held by Creditor be determined to be secured in the amount of $21,507.07 and that the negative equity carried into

the loan from a trade-in of Debtor's prior vehicle in the amount of $4,400.00 be determined to be an unsecured claim.

The Creditor filed a Proof of Claim No. 2 on October 1, 2014, claiming a secured claim in the amount of $26,333.28. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 2 shows that the total amount financed by the Movant was $26,980.45. There was a net trade-in of <-$4,400.00>. Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 16.3% of the amount financed and the remaining 83.7% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 2, $4,292.32 of the amount financed is to the negative net equity from the trade-in. The remaining $22,040.96 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant is only seeking to value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

The creditor's secured claim is determined to be in the amount of $22,040.96. *See* 11 U.S.C. § 506(a). The remaining $4,292.32 is determined to be a general unsecured claim arising from the negative equity from the trade-in. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Gary and Cheryl Petersen ("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 Americredit Financial Services, Inc. ("Creditor") secured by an asset described as 2010 Hyundai Genesis ("Vehicle") is determined to be a secured claim in the amount of $22,040.96. This is the amount of the secured claim which pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a) [the unnumbered paragraph following § 1325(a)(9)], and the balance of the claim, $4,292.32, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $17,200.00 and is encumbered by liens securing claims which exceed the value of the asset.

17. 14-28862-E-13 DAVID/TOMASA OWENS MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 1-23-15 [36]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 23, 2015. By the court's calculation, 46 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.

David and Tomasa Owens ("Debtors") filed the instant Motion to Confirm Debtors' First Amended Plan on January 23, 2015. Dckt. 36. The Declaration in support of the Motion states that Debtor fell behind in the plan payments of $310.00 because Mr. Owens was injured and Debtor suffered a "loss of income." Dckt. 40. No testimony is provided as to how the injury has effected Mr. Owens ability to generate an income and the impact it has on Debtor's ability to perform in this case. The Declaration then states that in January 2015, Debtor will begin making payments of $925.00.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 24, 2015. Dckt. 48. The Trustee objects on the ground that the Debtor may not be able to make the plan payments as required by 11 U.S.C.

§ 1325(a)(6).

The Trustee states that the Debtors' declaration in support of the Motion indicates that the source of the Debtors' income is employment with Apple and from their gym. Dckt. 40. The Debtors expect that this income will be for the remainder of the plan. Debtors' supplemental Schedule I indicates that Debtor David Owens has gross employment income from Jampro Antennas Inc. of $2,253.33 per month. Dckt. 42. Line 8a lists $0.00 net business income and the business income and expense attachment lists $0.00 net business income. The Trustee has not received any pay stubs to date for Debtor David Owens from Jampro Antennas, Inc.

Debtors' supplemental Schedule J lists several changes in expenses:

EXPENSES	ORIGINAL SCHEDULE J	AMENDED SCHEDULE J	DIFFERENCE
Food	$600.00	$1,000.00	$400.00
Childcare/Education	$15.00	$400.00	$385.00
Clothing/Laundry	$50.00	$100.00	$50.00
Personal Care	$50.00	$100.00	$50.00
Mental/Dental	$7.00	$15.42	$8.42
Transportation	$200.00	$470.00	$270.00
Entertainment	$11.00	$0.00	<$11.00>
Charity	$5.00	$6.00	$1.00
Taxes	$200.00	$0.00	<$200.00>
TOTAL			$1,353.42

Debtors have failed to offer any explanations for these changes.

Lastly, the Trustee notes that the Debtors state in their declaration that they are surrendering the 2006 Chevy back to Lobel Financial. Dckt. 40, pg. 3. A review of Schedule B indicates that Debtors have no other vehicle in their possession. The Statement of Financial Affairs, item no. 14 lists no property held for another person. The Trustee is concerned how Debtors will commute to work given that they have surrendered their only mode of transportation.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objections on March 3, 2015. Dckt. 51. The Debtors request "additional time to respond to the Trustee's concerns and provide additional documentation in support of their plan."

DISCUSSION

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

confirmation.

The Trustee's objections are well-taken. A review of the plan, the Motion, the declaration of the Debtors, and the supplemental Schedules I and J show there are large, unexplained changes to both income and expenses that raise serious concerns on the feasibility of the plan. The Debtors have increased their expenses by nearly $1,400.00 without providing any evidence or justification why such increases have taken place. Furthermore, the Debtors have not provided the Trustee any evidence of Debtor David Owens' employment with Jampro Antennas, Inc. The court and the Trustee cannot determine the viability and feasibility of the plan when the Debtors have failed to provide evidence of their financial reality.

Additionally, the court is also concerned with how the Debtors intend to get to and from work when the only vehicle listed under the penalty of perjury is to be surrendered to the creditor. This once again raises concerns over the feasibility and truthfulness of the proposed plan.

Debtor filed this motion and presented (presumably) the best evidence available to support confirmation. When debtors make significant changes in income or expenses, the court has over the past five years required there to be an explanation for those changes. When Debtor filed the Motion, no explanation was provided. Whether this is because no explanation exists or Debtor does not want to testify under penalty of perjury the reason for the change, the court does not know.

Debtor now requests a continuance so that such explanation and evidence of thereof can be prepared. As has been explained in open court on a number of occasions, a movant's obligation to provide credible competent evidence does not exist only when someone opposes the motion. The court does not engage in a "catch me if you can, and if you do, then I'll fulfill my obligations" game. The court also will not engage in a game in which moving parties shift the burden on the Trustee or other parties to force the debtor to fulfill his or her minimum obligations of presenting evidence in support of the requested relief.

Debtor's request for a continuance is denied. The Debtors and Debtors' counsel can take the concerns of the court and the Trustee and file a new amended plan and motion to comply with the requirements of 11 U.S.C. §§ 1322, 1323, and 1325.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

18. 15-20065-E-13 GARY SHIMOTSU — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK**
DPC-1 Matthew R. Eason — **2-11-15 [23]**

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 February 11, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The plan fails to provide for the secured portion of the Internal Revenue Service. The plan lists the Internal Revenue Service in class 5 as a priority creditor in the amount of $102,000.00. However, the Internal Revenue

Service filed a priority claim for $12,537.14 and a secured claim for $100,915.74. Proof of Claim No. 4-1. The Plan does not provide for the secured claim with interest.

2. The Debtor lists real property on Schedule A commonly known as 9893 Nestling Circle, Elk Grove, California. The Debtor's schedule A reflects that this property is held in the name of Gary Shimotsu Revocable Living Trust. The Debtor fails to list the trust on Schedule B and fails to provide the contents of the trust, other than the real property.

3. It appears that the plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt assets total $102,153.00 and the Debtor is proposing a 0% dividend to unsecured creditors. The non-exempt assets consists of the following:

$92,153.00 from real property listed on Schedule A. The Debtor is not eligible to use the Homestead Exemption under California Code of Civil Procedure § 704.730 as the real property is held in a trust, therefore all equity is non-exempt. The Trustee's Objection to exemptions will be filed and set for hearing on March 24, 2015.

$10,000.00 from investment with Elk Grove Fit Body Boot Camp, which is not exempted on Schedule C.

4. The additional provisions of the plan call for a payment of $97,857.99 in month 60. However, the Debtor has failed to indicate the source of this payment.

5. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor lists income of $$1,569.35 on Schedule I from payments from Shimotsu Archt, Inc. However, the Debtor has indicated on the Statement of Financial Affairs, question no. 18, that the business is winding down now.

6. While the plan proposes to pay the attorney $4,000.00 through the plan under Local Bankr. R. 2016-1(c), the Disclosure of Compensation of Attorney for Debtors (Dckt. 1, pg. 38) appears to list in item 6 that the attorney services do not include some services required under Local Bankr. R. 2016-1(c), such as relief from stay actions and judicial lien avoidances. The Trustee believes that the Attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, unless a separate motion is made for any attorney fees.

DISCUSSION

The Trustee's objections are well-taken.

The plan does not appear to provide for the full claim of the Internal Revenue Service. 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. Here, the Debtor has provided for the claim but not the full amount claimed. Therefore, the plan cannot be confirmed.

As to the Trustee's second objection, the Debtor's schedules do not fully disclose the assets of the Debtor. The Debtor's do not list the irrevocable trust under Schedule B which then raises concerns as to what other assets the Debtor may be failing to list.

There appears to be liquidation analysis issues, especially in light of the Debtor's possible non-exempt equity. There appears to be significant non-exempt assets that could be distributed to the unsecured creditors. The Debtor is proposing a 0% dividend which is inappropriate given the substantial amount of non-exempt assets.

Debtor does not appear to be able to make the plan payments. The Debtor admits that Shimotsu Archt, Inc. is winding down. With a significant portion of Debtor's income being eliminated through the closing of Shimotsu Archt, Inc., the Debtor has not provided any evidence or declaration to explain how the Debtor will be able to make the plan payments with a cut in income. The Debtor does not appear to be able to make the plan payments as required by 11 U.S.C. § 1325(a)(6).

As to the Trustee's sixth objection, the court is not persuaded as to the fact that the Debtor's attorney is trying to exclude required services, such as relief from stay actions. Based on the language of the Disclosure of the Disclosure of Compensation of Attorney for Debtors (Dckt. 8, pg 35), it appears that the Debtor was attempting to exclude adversary proceedings, and not general relief from stay defense. Reading the sentence in its entirety, the court takes the exclusion to be for adversary proceedings which are not required under the no look provisions of Local Bankr. R. 2016-1(c). The failure to check a box on section 2.06 on the proposed plan is more akin to a scrivener's error which can be corrected in the order confirming, especially in light of the fact the Debtor provides for an amount of the fees to be paid through the plan.

Therefore, in light of the Trustee's objections, 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.

19. 15-20077-E-13 CARL/CAROLYN FORE
AMC-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF PLAN BY CENTRAL MORTGAGE COMPANY
2-11-15 [25]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 11, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Central Mortgage Company dba Central Mortgage Loan Servicing Company ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not account for all of the pre-petition arrearages owed to Creditor as set forth in Creditor's Proof of Claim No. 7. 11 U.S.C. § 1322(a)(5).

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to the Creditor's objection on February 26, 2015. Dckt.33. The Trustee objects on the ground that the Trustee was not properly served. The Creditor's Proof of

Service states that the Trustee is "TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)." However, the court Clerk's Notice of Electronic Filing does not constitute service in the Eastern District pursuant to Local Bankr. R. 7005-1(d)(1). The Local Bankr. R. 7005-1(d)(1) requires transmitting an email which includes the document as a PDF attachment, with specific language in the subject line of the email.

As to the merits of the objection, the Trustee agrees that based on the outstanding claim by the Creditor, the court should deny confirmation based on the asserted arrears of $22,740.76. The Debtor acknowledges the mortgage payment at $2,600.00 in the plan but asserts only $10,000.00 due. Dckt. 5, pg. 2, § 2.08.

DISCUSSION

A review of the Creditor's Proof of Service does in fact show that the Creditor improperly served the Trustee, Debtor's Counsel, and the United States Trustee. In relevant part, Local Bankr. R. 7005-1(d) provides:

> (d) Method of Service.
>
> (1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first text line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.

Here, it appears that the Creditor was relying on the local rules of the Central District where NEF service is sufficient. Such is not the case in the Eastern District.

While the Creditor's objections may be valid and justify denying confirmation, the court cannot rule on an objection when there was improper service. Since the Creditor has failed to properly serve the Trustee, Debtor's Counsel, and the United States Trustee, the Objection is overruled. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

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 is overruled.

20. 15-20080-E-13 JESUS/JESSICA CARDENAS
DPC-1 Ashley R. Amerio
OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
2-11-15 [29]

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

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 the Objection was dismissed without prejudice, and the plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is dismissed. 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.

21. 13-33583-E-13 SUE MARIANO
DPC-1 Charnel J. James

NOTICE OF DEFAULT AND MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
1-16-15 [110]

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

Local Rule 9014-1(f)(3) 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, and Office of the United States Trustee on February 16, 2015. By the court's calculation, 22 days' notice was provided.

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments 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 Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments is continued to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Confirm.

David Cusick, the Chapter 13 Trustee, served a Notice of Default and Application to Dismiss on December 19, 2014 pursuant to Local Bankr. R. 3015-1(g). Dckt 110.

Trustee argues that the Debtor has failed to make all payments due under the plan. As of January 15, 2015, payments are delinquent in the amount of $2,455.75. An additional payment of $1,137.00 will become due on January 25, 2015.

On February 17, 2015, the Debtor filed a Notice of Hearing and Opposition to the Notice, setting a hearing for 3:00 p.m. on March 10, 2015. Dckt. 112. The Debtor states that the Debtor was out of work for an unexpected medical condition. However, Debtor states that she is back to work and is currently proposing to amend her Plan to put her current, and to repay the arrears by increasing her monthly payment by $83.56.

APPLICABLE LAW

Local Bankr. R. 3015-1(g) provides the following:

> (g) Dismissal Due to Plan Payment Defaults.
>
> (1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either

(A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or

(B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

(5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing a motion to dismiss the case. Such a motion may be set for hearing pursuant to either LBR 9014-1(f)(1) or (f)(2).

DISCUSSION

A review of the docket shows that the Debtor has filed a modified plan and Motion to Confirm the Modified Plan on February 17, 2015. Dckt. 114 and 116. The proposed modified plan appears to cure the arrearages by increasing plan payments. The Motion to Confirm has been set for hearing on April 14, 2015 at 3:00 p.m. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601,

602).

Because of the proposed modified plan being set for hearing in April and the plan attempting to cure the arrearages which are the basis for the instant Notice, the court continues the hearing to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Confirm.

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 Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments filed by 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 is continued to 3:00 p.m. on April 14, 2015.

22. 13-26192-E-13 SJS-5 RICHARD/RHONDA SAMPOGNARO Scott J. Sagaria

MOTION FOR COMPENSATION BY THE LAW OFFICE OF SAGARIA LAW, P.C. FOR SCOTT J. SAGARIA, DEBTOR'S ATTORNEY
2-10-15 [76]

Final Ruling: No appearance at the March 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. By the court's calculation, 28 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 taken under submission, with the order to issued by the court without hearing.

Scott Sagaria, the Attorney ("Applicant") for Richard and Rhonda Sampognaro the Chapter 13 Debtor ("Client"), makes an additional Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested has not been explicitly stated. Applicant requests fees in the amount of $560.00. In the body of the motion task, billing, time, and charges are set forth in a table.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, objects to Debtor's Motion for Additional Attorneys Fees for the following reasons:

1. Attorneys Fees have already been authorized through the confirmed Plan. The order confirming the Plan specifies that total fees of $6,000.00, with $4,500.00 paid through the Plan.

2. The Declaration in Support of the Motion (Dckt. 79) indicates on page 1, lines 22-23 that Counsel is the attorney of record for Debtors "Chuck Lee

Stiede and Wendy Lea Stiede."

3. Additionally, in Movant's Declaration, on page 2, lines 8-10, Applicant and Debtors agreed on initial fees for legal services of $4,000.00 as reflected in the Rights and Responsibilities and the 2016(b) Disclosure Statement. Review of these documents (Dckt. 22 and 23, p.34) indicates that the total fees of $6,000.00 were agreed to by the Debtors.

4. Lastly, Movant's Exhibit in Support of the Motion (Dckt. 78) does not include invoice and billing statements necessary to support the instant motion

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.

“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.

When an attorney 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). The attorney 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 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

Here, the Applicant has provided some necessary information in the Motion but has failed to provide a declaration authenticating any of the information in the Motion. In fact, the declaration submitted by the Applicant misstates the name of the Debtors in the instant case. The Applicant does not provide any exhibits with time sheets but instead provides for a rudimentary break down of the fees requested in the Motion. The deficient declaration does not authenticate this information in the Motion.

Without the information required under Local Bankr. R. 2016-1(c), the Applicant is appearing to request the court to “fill-in-the-blanks” for the missing pieces in order for the Motion to be granted. The court declines the offer. If the Applicant is seeking the additional fees, it is the Applicant who has the burden of providing properly authenticate evidence.

Most notably, however, is that Movant does not state in neither the Motion

nor the declaration any basis as to why and how the services rendered were "substantial and unanticipated." As discussed supra, an applicant seeking fees in addition to the "no-look" fees must show that the legal services provided were "substantial and unanticipated" to justify the court granting the extraordinary relief of additional fees. Here, the Applicant provides no such explanation.

Applicant chose to accept the set fee for work to be done in this case, because the prosecution of the case within the scope of the set fee was more complicated than he projected at the start of the case. Such is not an exception to, or grounds to breach, the set fee agreement. Every consumer attorney could assert this as a grounds to ignore the agreed set fees when he or she spends more time than projected. However, in cases when the set fee works to be a bonus (Applicant spending less time than equal to the set fee), Applicant does not state that the rules require him to give the extra amount back. The set fee exists to allow Applicant to elect to accept such fees, taking the bonus in some cases and spending more time in other cases – but in the end the over and under amounts balance out.

It may be that Applicant could, consistent with Local Bankruptcy Rule 2016-1(c)(3), seek the payment of additional fees for "substantial and unanticipated work" outside of what is included in the agreed to set fee. But Counsel must seek such additional fees, not ignore the agreed set fee and Local Bankruptcy Rule 2016-1. In seeking such additional fees, Counsel shall provide the court with the standard lodestar analysis (even if from reconstructed records), which will include a statement as to the benefit of the services to the Debtor and estate.

In this case, Applicant provides no such lodestar analysis and fails in his declaration to even properly name the debtors whom he represents.

Supplemental Submission of Evidence Permitted.

However, given the modest amount being sought and what the court guesses to be the reason for the additional services, rather than denying the motion the court will permit the submission of supplemental evidence. Applicant shall file supplemental evidence in support of the fees requested (testimony under penalty of perjury as to the changes, tasks, and amounts) in the form of a declaration and any exhibits to which the testimony relates. The Applicant shall file the supplemental evidence in support of the Motion on or before March 13, 2015.

The court shall consider the supplemental evidence and the pleadings to date, and from that evidence issue a ruling either granting (in all or part) the motion or denying it without prejudice. No further oppositions are allowed.

23. 15-20793-E-13 DAVID TUMLINSON **MOTION TO VALUE COLLATERAL OF**
MMM-1 Mohammad M. Mokarram **SANTANDER CONSUMER USA, INC.**
2-9-15 [9]

Final Ruling: No appearance at the March 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, parties requesting special notice, and Office of the United States Trustee on February 9, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Santander Consumer USA, Inc. ("Creditor") is $3,703.00.

The Motion filed by David Leon Tumlinson, JR. ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Hyundai Sonata Sedan ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,703.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in February 1, 2008, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $5,482.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $3,703.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by David Leon Tumlinson, JR. ("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 Santander Consumer USA, Inc. ("Creditor") secured by an asset described 2006 Hyundai Sonata Sedan ("Vehicle") is determined to be a secured claim in the amount of $3,703.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $3,703.00 and is encumbered by liens securing claims which exceed the value of the asset.

24. 14-30097-E-13 IRVIN/THERESA WHITE MOTION TO CONFIRM PLAN
TLA-4 Thomas L. Amberg 1-27-15 [50]

Final Ruling: No appearance at the March 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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 27, 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.

25. 13-23599-E-13 IVAN MONTELONGO
PGM-8 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
2-6-15 [131]

Final Ruling: No appearance at the March 10, 2015 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, creditors, parties requesting special notice, and Office of the United States Trustee on February 6, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to 3:00 p.m. on June 9, 2015.

The Motion to Approve Loan Modification filed by Ivan Montelongo ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,105.85 at 2% interest. The term of the loan will be 259 months. The modified principal amount will include all amounts and arrearages that will be past due as of the modification effective date. The new principal balance is $265,623.65, of which $77,600.00 shall be deferred and no interest or monthly payments will be made on that amount.

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.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 23, 2015. Dckt. 136. The Trustee states that he does not object to the terms of the modification. However, the Trustee is not certain if the loan modification agreement is being offered by the party who is the owner or holder of the existing note or, if not, what authority the Creditor has in entering into such modification.

Debtor's counsel filed a secured claim on December 10, 2013, Proof of Claim No. 12-1 for mortgage arrears in the amount of $51,014.23. Debtor's claim indicates Debtor was and is indebted to US Bank, N.A. Debtor filed no attachments to the proof of claim.

There is no evidence showing that Creditor is the actual creditor or has the authority to enter into the loan modification. Neither the creditor nor Debtor have testified that money was borrowed from, a promissory note was signed naming, or that a promissory note was assigned or transferred to Creditor.

DEBTOR'S RESPONSE

The Debtor filed a response to the Trustee's objections on March 3, 2015. Dckt. 142. The Debtor requests a 90 day continuance to further investigate who the true holder of the loan is and whether Creditor has the authority to enter into loan modification agreements.

DISCUSSION

This is not Debtor's counsel first time attempting to get approval for a loan modification without providing evidence that the party of the loan modification agreement has the authority to enter such agreement. No explanation is provided as to why counsel, as of the February 6, 2015, filing of the Motion had a good faith belief that Ocwen **Loan Servicing**, LLC was the creditor with whom Debtor was modifying the contract. No secured claim has been filed by the creditor.

As more and more loan servicers and creditors are entering into large dollar consent decrees to correct sloppy, bad, and inaccurate practices concerning consumer loans, servicing loans secured by a consumer's residence, and modifying (or failing in good faith to engage in the modification process) a consumer's loan secured by his or her residence, little excuse exists for filing motions requesting the court to enter an order purporting to grant relief only with respect to a loan servicer.

When Debtor commenced this case on March 18, 2013, he listed U.S. Bank, N.A. as the creditor having a claim secured by his residence. He further listed Ocwen Loan Servicing, LLC as the "Assignee or other notification for U.S. Bank National Association." Dckt. 1 at 22. In the approximately 730 days since the commencement of this case, if the Debtor has doubt that U.S. Bank, National Association is the creditor with whom it is entering into a loan modification, Debtor could have availed himself of a simple Rule 2004 written interrogatories for Ocwen Loan Servicing, LLC to identify the creditor. If Owen Loan Servicing, LLC is acting as an authorized agent for the creditor, then it could, and should, clearly disclose (1) who it is acting for and (2)

the basis of that authority to act.

The response of Debtor and Debtor's experienced counsel that Ocwen Loan Servicing, LLC has been presented to this "unsophisticated Debtor" as the creditor is not credible. It is Debtor's sophisticated, experienced counsel who should be making sure that the Debtor is entering into an effective, enforceable contract with the creditor – not some straw person who may, or may not, be authorized to enter into contracts in its own name which may, or may not, bind the actual creditor.

It appears that the present motion has been filed without regard to the basic constitutional requirements for a federal court to exercise judicial power - the real parties in interest who have an actual case or controversy are before the court. U.S. CONT. Article III, Sec. 2. Merely because a person just wants to "take a shot at getting an order which may, or may not, be effective" does not compel the federal court to blindly hand out such orders.

In light of the court having made this clear for several years, and has brought in many of the loan servicers, including Ocwen Loan Servicing, feigned ignorance of this issue and basic requirement of the Constitution are unpersuasive. Debtor's experienced counsel has personally participated in those cases, so little excuse can be given for presenting such a loan modification without documenting that a loan servicer is actually the creditor, exists.

SETTING DISCOVERY SCHEDULE

Though Debtor asks for a continuance to address the issues raised by the Trustee, little reason exists for such a continuance. The court will set a schedule for Debtor to conduct discovery in this contested matter (Fed. R. Bankr. P. 9014, incorporating the discovery provisions of Fed. R. Bankr. P. 7028-7037, as well as Fed. R. Bankr. P. 2004). Though Debtor provides no reason for failing to avail himself of Rule 2004 discovery, in this case the court will give some additional time. FN.1.

FN.1 Counsel in this case, as well as other attorneys, should not presume that relying on the Chapter 13 Trustee or the court to identify situations where the minimal discovery has not been conducted will occur in other cases. If the denial of an order approving a loan modification results in the consumer debtor losing the loan modification, losing the home, and losing the potential appreciation in the home through a loan modification, such attorney who fail to conduct proper discovery can address such losses directly with their client.

The court continues the hearing to 3:00 p.m. on June 9, 2015, to allow Debtor to conduct such discovery as appropriate to document who the creditor is with whom Debtor is asking the court to approve a loan modification.

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 Ivan

Montelongo 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 continued to 3:00 p.m. on June 9, 2015, to afford the Movant to conduct discovery and present the court with evidence in support of the motion.