UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 22, 2015 at 10:00 a.m.

1.	10-39713-B-13 MRL-1	TODD KRAMER AND SUSAN SAVAGE Mikalah R. Liviakis	MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW FIRM DEBTORS' ATTORNEY(S) 3-16-15 [70]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

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

The Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Mikalah Raymond Liviakis ("Applicant"), the attorney to Chapter 13 Debtors Todd Kramer and Susan Savage ("Clients"), makes his first request for the allowance of fees in the amount of $530.50 and expenses in the amount of $0.00. The period for which the fees are requested is for September 30, 2014 through March 10, 2015.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 73, Exh. A).

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as

compensation to this professional in this case:

Fees	$530.50
Costs and Expenses	$0.00

2. 14-29215-B-13 JEFFERY/SANDRA THOMAS MOTION TO CONFIRM PLAN
MET-3 Mary Ellen Terranella 3-10-15 [55]

Tentative Ruling: The Motion to Confirm the Amended Plan has been set for hearing on the 42-days 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

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 Motion to Confirm the Amended Plan is denied without prejudice.

Jeffrey Thomas and Sandra Thomas ("Debtors") filed a response on April 15, 2015, and provided the Chapter 13 Trustee with the requested documents except for a copy of their income tax return for the tax year 2014. The Debtors have agreed to produce their 2014 tax return when it is completed; however, the Debtors provide no indication when that will be.

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

3.	15-20915-B-13 JMC-1	RONALD/URSULA VIVIANI Joseph M. Canning	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 3-11-15 [17]

Final Ruling: No appearance at the April 22, 2015 hearing is required. CONTINUED TO 4/27/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

4.	15-20915-B-13 JMC-2	RONALD/URSULA VIVIANI Joseph M. Canning	MOTION TO AVOID LIEN OF STATE OF CALIFORNIA, EDD 3-11-15 [22]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of State of California, EDD ("Creditor") against property of Ronald Viviani and Ursula Viviani ("Debtors") commonly known as 741 Thereza Way, Rio Vista, California ("Property").

A judgment was entered against the Debtors in favor of Creditor in the amount of $7,919.99. An abstract of judgment was recorded with Solano County on November 26, 2014, which encumbers the Property. However, Debtors attest that State of California, EDD holds a judicial lien against the Property in the amount of $1.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $175,000.00 as of the date of the petition. The unavoidable consensual liens total $228,000.00 as of the commencement of this case are stated on Debtors' Schedule D. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided in its entirety, subject to 11 U.S.C. § 349(b)(1)(B).

5.	15-20915-B-13 JPJ-1	RONALD/URSULA VIVIANI Joseph M. Canning	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 3-11-15 [27]

Final Ruling: No appearance at the April 22, 2015 hearing is required. CONTINUED TO 4/29/15 AT 10:00 A.M. IN DEPT. B BEFORE THE HON. CHRISTOPHER D. JAIME. WITH THE STIPULATION REGARDING VALUATION OF BANK OF AMERICA CLAIM FILED 4/17/15, IT APPEARS THE TRUSTEE'S OBJECTION FILED 3/11/15 MAY BE SATISFIED.

6. 13-28916-B-13 DONALD LEE
DJC-3 Diana J. Cavanaugh

MOTION TO RECONSIDER DISMISSAL OF CASE
4-8-15 [65]

CASE DISMISSED 4/3/15

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to 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. If there is opposition, the court may reconsider this tentative ruling.

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

The motion will be determined at the scheduled hearing.

7.	15-21418-B-13 APN-1	ANNE-MARIE FLORES C. Anthony Hughes	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 3-13-15 [19]

Thur #8

Final Ruling: No appearance at the April 22, 2015 hearing is required. CONTINUED TO 4/27/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

8.	15-21418-B-13 JPJ-1	ANNE-MARIE FLORES C. Anthony Hughes	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 3-30-15 [24]

Final Ruling: No appearance at the April 22, 2015 hearing is required. CONTINUED TO 4/27/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

9. 11-25920-B-13 SJS-3 — MATTHEW WILLIAMS AND MICHELLE ALFORD — MOTION TO INCUR DEBT 4-6-15 [79]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to 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. If there is opposition, the court may reconsider this tentative ruling.

The Motion to Incur Debt is granted.

The motion seeks permission to purchase a 2011 Chevrolet Equinox LS Sport Utility 4D with approximately 45,000 miles. The total purchase price of which is $22,447.61, with a trade-in down payment of $1,500.00, and monthly payments of $368.36. This monthly payment is approximately $1.00 less than the formerly approved $369.37. No changes need to be made to Debtors' budget. Based n the reductions in monthly income, it is projected that the Debtors will have $127.00 per month in disposable income for the payment of the Chapter 13 plan.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

10.	15-22720-B-13 MOH-1	MARC LUCERO Michael O'Dowd Hays	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 4-7-15 [10]

Final Ruling: No appearance at the April 22, 2015 hearing is required. CONTINUED TO 4/27/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS

11. 15-21326-B-13 JEFFREY/ARLEEN MILLS
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-1-15 [23]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(c). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

Jeffrey Mills and Arleen Mills ("Debtors") filed an incomplete Schedule I on March 29, 2015. The schedule does not provide detailed statement of each rental property showing gross receipts, ordinary and necessary business expenses, and the total net monthly income. Thus, the Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Because the Plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

12. 14-31130-B-13 APN-1 **Thru #14**
RICKEY/LILLIAN NELSON
Oliver Greene
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA, INC.
12-18-14 [29]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to sustain the Objection.

The subject of this motion relates to a 2009 Suzuki SX4 ("Subject Property"). Rickey Nelson and Lillian Nelson ("Debtors") assert that the vehicle is valued at $3,025.00. As the owner, the Debtor's opinion of value is some 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).

However, Santander Consumer USA, Inc. ("Creditor") contends that the vehicle is valued at $7,000.00. Creditor relies on the value given in the NADA Guide (Dkt. 31, p. 4). Creditor asserts that, since the Debtors have not provided further evidence explaining the valuation discrepancy, that the Debtors have not satisfied their burden under 11 U.S.C. § 506(a)(2). The court agrees.

The Objection is sustained. Because Creditor's secured claim remains in dispute and the Debtors have done nothing since the plan was filed on November 12, 2014, to substantiate the value. The plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), and it is not confirmed.

Because the Plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

13. 14-31130-B-13 CAH-2
RICKEY/LILLIAN NELSON
Oliver Greene
CONTINUED MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
12-15-14 [21]

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

The Motion to Value secured claim of Santander Consumer USA ("Creditor") is denied without prejudice.

The Motion filed by Rickey Nelson and Lillian Nelson ("Debtors") to value the secured claim of Creditor is accompanied by Debtor's declaration. Debtors are the owner of a 2009 Suzuki SK4 LE ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $3,025.00 as of the petition filing date. As the owner, the Debtors' opinion

of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, Santander Consumer USA, Inc. ("Creditor") contends that the vehicle is valued at $7,000.00. Creditor relies on the value given in the NADA Guide (Dkt. 31, p. 4). Creditor asserts that, since the Debtors have not provided further evidence explaining the valuation discrepancy, that the Debtors have not satisfied their burden under 11 U.S.C. § 506(a)(2). The court agrees and, therefore, the motion to value is denied.

14.	14-31130-B-13 JPJ-1	RICKEY/LILLIAN NELSON Oliver Greene	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 12-16-14 [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 offer 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, feasibility of the plan filed November 12, 2014 depends on the granting of a motion to value collateral of Santander Consumer USA for a 2009 Chevy Impala and for a 2009 Suzuki SX4. The court has denied the motion to value the Suzuki.

Second, the Debtors have not amended their petition to disclose the filing of a previous bankruptcy case as requested by the Trustee at the Meeting of Creditors. To date, the Debtors have not amended the petition and have failed to comply with 11 U.S.C. § 521(a)(3).

Third, the Plan was filed November 12, 2014. Since then, the Debtors have done nothing to substantiate the value of the Suzuki vehicle or move this matter forward resulting in unreasonable and prejudicial delay.

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

Because the Plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

15. 15-21333-B-13 JULIO/LUZ MURRIETA
JPJ-1 Cara M. O'Neill

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
3-30-15 [20]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(c). No written reply has been filed to the Trustee's objection.

The court's decision is to sustain the Objection and conditionally deny the Motion to Dismiss.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors' must pay no less than $60,128.40 to general unsecured creditors. However, the plan will only pay $40,776.54 to Class 6 special unsecured creditors and $0.00 to Class 7 general unsecured creditors.

Third, the 28 claims listed in Class 6 are misclassified. The plan does not provide a legitimate reason for special treatment, such as co-signed debts, that justifies paying these claims in full even though all other nonpriority unsecured claims may not be paid in full.

Fourth, feasibility cannot be assessed because the terms for payment of the Debtors' attorney's fees are unclear. The plan specifies a monthly payment of $0.00 for administrative expenses. As such, the Trustee would be unable to pay the balance of Debtors' attorney's fees and any other administrative expenses through the plan with a monthly payment specified at $0.00.

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

Because the Plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

16. 15-21636-B-13 WILLIAM WAY — MOTION TO VALUE COLLATERAL OF
JLK-2 James L. Keenan — US BANK
Thru #17 — 3-26-15 [18]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to 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. If there is opposition, the court may reconsider this tentative ruling.

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.

The Motion to Value secured claim of U.S. Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by William Way ("Debtor") to value the secured claim of U.S. Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6715 Santa Juanita Avenue, Orangevale, California ("Property"). Debtor seeks to value the Property at a fair market value of $215,000.00 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.

RESPONSE

Creditor has filed a response stating that it does not oppose Debtor's motion but requests that its lien be retained to the extent recognized by applicable nonbankruptcy law if the case is dismissed, converted to any other chapter, sold, refinanced, or foreclosed upon prior to Debtor's completion of the Chapter 13 plan and receipt of a

Chapter 13 discharge.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $279,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $41,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The relief Creditor is requesting is already provided in § 2.09 of the plan.

17. 15-21636-B-13 WILLIAM WAY — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 James L. Keenan — 3-30-15 [25]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(c). No written reply has been filed to the Trustee's objection.

The court's decision is to overrule the Objection and deny the Motion to Dismiss.

Feasibility of the plan depends on the granting of Debtor's motion to value collateral for U.S. Bank, N.A., which holds a second deed of trust on the Debtor's residence. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, serve, and set for hearing a valuation motion, and the hearing on valuation must be concluded before or in conjunction with the confirmation of the plan.

The hearing on valuation, being concluded in conjunction with the confirmation of the plan pursuant to Local Bankr. R. 3015-1(j), and the court granting Debtor's motion to value collateral under Item #16, the Objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled and the Plan is confirmed.

18. 13-25938-B-13 JOSEPH TRIPOLI MOTION TO INCUR DEBT
RAC-2 Richard A. Chan 3-25-15 [27]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Motion to Incur Debt has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Incur Debt is granted.

The motion seeks permission to finance the purchase of household drinking water supply by agreement with Nevada Irrigation District ("NID"), the local water district. Joseph Tripoli ("Debtor") asserts that he can obtain 100% financing for $30,000.00 from NID and a personal loan from Gary Edwards of $35,380.00. The monthly payment to NID will be $182.00 per month, and the monthly payment to Mr. Edwards will be $168.00 per month. Thus, the combined monthly payment will be $350.00 (although the Motion miscalculates this amount to be $350.90). The total interest rate on both loans will be 4%. The usage rate will typically be $41.69 per month. The total average projected monthly budget cost would be $392.00.

Debtor maintains that his well's output and quality of drinking water has significantly decreased since he purchased his property and, therefore, he desires to participate in the District Financed Waterline Extension ("DEWE") program to receive treated water to his property. Golden Oaks HOA, which manages the properties participating in DEWE, has been trying to acquire the NID water since 1990. Debtor asserts that every prior effort has failed and that this opportunity is likely to be the only reasonable chance to receive NID water.

Debtor provides Amended Schedules I and J (Dkt. 30, Exh. D and E) to demonstrate his ability to make monthly payments without jeopardizing his ability to maintain the payments to the Chapter 13 Trustee under the terms of the confirmed plan. The Debtor has also received a slight cost of living increase in his Social Security Benefit amount.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

19. 14-20340-B-13 ARSENIO/LEONORA BUCAD — OBJECTION TO CLAIM OF CARRINGTON MORTGAGE SERVICES, LLC, CLAIM NUMBER 5
TJW-2 Timothy J. Walsh — 3-19-15 [38]

Tentative Ruling: The objection to proof of claim has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44-days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

The Objection to Proof of Claim Number 5, as modified by the Notice of Mortgage Payment Change, of Carrington Mortgage Services, LLC is overruled.

Arsenio Bucad and Leonora Bucad, the Chapter 13 Debtors ("Objectors"), request that the court disallow the claim of Carrington Mortgage Services, LLC ("Creditor"), Proof of Claim No. 5 ("Claim"), as modified by the Notice of Mortgage Payment Change ("Payment Change") filed on January 17, 2015. Debtor asserts that "[t]he basis of the objection is that the Claim, the Notice of Mortgage Payment Change, is unfounded, unsupported by documentation, oppressive and unlawful."

Claim 5 asserts a secured claim in the amount of $487,144.23. The Payment Change provides an arrears in property tax in excess of $34,726.71 (Dkt. 41, p. 4). Additionally, the Payment Change states that the arrears will be paid over a 12-month period, changing the payment from the Trustee from $2,587.41 per month to $4,796.34 (Dkt. 41, p. 2). The Payment Change provides a current escrow payment of $494.79 and a new tax escrow payment of $2,525.17 (Dkt. 41, p. 2).

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). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a). Here, the Objections do no more than assert that the proof of claim – and the debt stated in the proof of claim – are "unfounded," "unsupported," "oppressive" and "unlawful." Objectors provide the court with no supporting evidence to demonstrate how the claim is otherwise unfounded, oppressive, and unlawful. Objectors have, therefore, failed to satisfy their burden of overcoming the presumptive validity of the Claim.

Based on the look of evidence before the court, the creditor's Notice of Mortgage Payment Change and corresponding Proof of Claim is not disallowed. The Objection to the Proof of Claim is overruled.

20. 15-21742-B-13 MARCELLO/GEORGIA MARTINEZ — MOTION TO AVOID LIEN OF DISCOVER BANK
MC-1 Muoi Chea — 3-20-15 [14]

Thru #21

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Marcello Martinez and Georgia Martinez ("Debtors") commonly known as 6901 Weddigen Way, North Highlands, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $8,122.45. An abstract of judgment was recorded with Sacramento County on June 25, 2012, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $160,000.00 as of the date of the petition. The unavoidable consensual liens total $203,315.00 as of the commencement of this case are stated on Debtors' Schedule D. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

21. 15-21742-B-13 MARCELLO/GEORGIA MARTINEZ — MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
MC-2 Muoi Chea — 3-20-15 [19]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota) N.A. ("Creditor") against property of Marcello Martinez and Georgia Martinez ("Debtors") commonly known as 6901 Weddigen Way, North Highlands, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of $13,180.44. An abstract of judgment was recorded with Sacramento County on December 2, 2010, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $160,000.00 as of the date of the petition. The unavoidable consensual liens total $203,315.00 as of the commencement of this case are stated on Debtors' Schedule D. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

22. 13-35347-B-13 ANGEL/KARINA GARCIA
RJ-5 Richard L. Jare

MOTION TO DISCHARGE RULE 3015-1(G) NOTICE OF DEFAULT AND VACATE ANY SUBSEQUENT DISMISSAL
4-2-15 [95]

CASE DISMISSED 4/3/15

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to 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. If there is opposition, the court may reconsider this tentative ruling.

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

The motion will be determined at the scheduled hearing.

23. 15-20147-B-13 ANGEL CHEUNG
JHW-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
3-24-15 [29]

MERCEDES-BENZ FINANCIAL SERVICES USA, LLC VS.

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

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

The Motion for Relief From the Automatic Stay is denied without prejudice.

Mercedes-Benz Financial Services USA LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Mercedes ML350W4, VIN ending in -14060 (the "Vehicle"). The moving party has provided the Declaration of Jennifer Montiel ("Montiel Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Montiel Declaration states that there are no pre- or post-petition payments past due. However, the basis for the Movant's relief from stay is that Debtor's First Amended Chapter 13 Plan (Dkt. 33, Exh. C) provides for the surrender of the Vehicle to Movant. The Montiel Declaration acknowledges that the Debtor and non-filing co-debtor Xue Liu, sister to the Debtor, entered into a retail installment sale contract with Movant for the purchase of the Vehicle.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $11,870.84, as stated in the Movant's relief from stay information sheet. The value of the Vehicle is determined to be $13,000.00, as stated in Schedules B filed by Debtor.

OPPOSITION TO MOTION

Debtor has filed an opposition asserting that non-filing co-debtor Xue Liu is contractually current with the Vehicle's monthly payments. Additionally, Debtor states that she will have a new plan on file on or before the hearing. The proposed new plan will move the claim of Mercedes-Benz Financial Services to a Class 4 claim, where the non-filing co-debtor will continue monthly payments directly to the lender.

RULING

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause does not exist for terminating the automatic stay since the Debtor has made post-petition payments and is current. Debtor will also propose a direct pay plan. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, there appears to be equity in the Vehicle so relief under § 362(d)(2) is not warranted.

The court shall not issue an order terminating and vacating the automatic stay to allow Mercedes-Benz Financial Services USA LLC, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

24. 14-32352-B-13 CORY/SIOUX ENOS MOTION TO CONFIRM PLAN
JME-2 Steele Lanphier 3-11-15 [30]

Tentative Ruling: The Motion to Confirm the Amended Plan has been set for hearing on the 42-days 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

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 Motion to Confirm the Amended Plan is denied without prejudice.

First, the plan filed March 11, 2015 is unclear as to payments for months 1 and 2. Clarification is needed to determine the monthly payment amounts for all 60 months of the plan. Debtors cannot only imply that a payment amount of $3,291.86 begins in month 2 of the plan.

Second, the proposed plan does not specify a cure of the Nationstar Mortgage post-petition arrearage, including a specific post-petition arrearage amount, interest rate, and monthly dividend.

Third, the plan will take approximately 73 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Fourth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors must pay no less than $17,331.00 to general unsecured creditors, but the Debtors' plan will pay only $10,646.17 to general unsecured creditors within the 60 month life of the plan.

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

25. 14-32162-B-13 WILLIAM HENSON
Bruce Charles Dwiggins

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK NATIONAL ASSOCIATION
2-19-15 [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 offer 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to sustain the objection.

The Debtor's proposed Plan provides no treatment for U.S. Bank, N.A.'s ("Creditor") pre-petition arrearages in the amount of $659.22 related to an advance for taxes. Furthermore, this matter was continued from 3/11/15 to 3/25/15, from 3/25/15 to 4/08/15 and from 4/08/15 to 4/22/15 to allow the parties to resolve this matter as was represented to the court. As of the date of this tentative ruling, the court has no indication that the matter is resolved. No further continuances are allowed.

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

Because the Plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

26.	15-21278-B-13 SDB-2 **Thru #27**	DOROTHY GUINANE W. Scott de Bie	MOTION TO AVOID LIEN OF CAPITAL ONE BANK 3-19-15 [21]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Capital One Bank ("Creditor") against property of Dorothy Guinane ("Debtor") commonly known as 1105 Taylor Avenue, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $1,955.54. An abstract of judgment was recorded with Solano County on January 23, 2008, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the date of the petition. The unavoidable consensual liens total $166,963.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)(5) in the amount of $26,925.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

27. 15-21278-B-13 DOROTHY GUINANE
SDB-3 W. Scott de Bie

MOTION TO AVOID LIEN OF MBNA AMERICA BANK, N.A.
3-19-15 [27]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Motion to Avoid Judicial Lien has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of MBNA America Bank, N.A. ("Creditor") against property of Dorothy Guinane ("Debtor") commonly known as 1105 Taylor Avenue, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $10,140.23. An abstract of judgment was recorded with Solano County on May 22, 2007, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $150,000.00 as of the date of the petition. The unavoidable consensual liens total $166,963.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1)(5) in the amount of $26,925.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

28. 15-21781-B-13 JASON/SHELLY BELOTTI
RCO-1 Richard D. Steffan

OBJECTION TO CONFIRMATION OF PLAN BY LOANDEPOT.COM
3-27-15 [17]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(c). No written reply has been filed to loanDepot.com's objection.

The court's decision is to sustain the Objection.

First, Debtors' plan does not cure the arrears owed or provide for ongoing payments to loanDepot.com ("Creditor"), which holds a first deed of trust against Debtors' principal residence located at 3906 Southpark Place, Auburn, California ("Property"). Debtors' plan does not provide for the full payment of Creditor's claim pursuant to 11 U.S.C. § 1325(a)(5).

Second, by listing Creditor in a Class 2 claim, Debtors' plan impermissibly modifies the rights of Creditor whose claim is secured only be an interest in real property that is the Debtors' principal residence. This is in violation of 11 U.S.C. §§ 1325(a)(1) and 1322(b)(2).

Third, the plan is not feasible because it does not provide for the cure of the pre-petition arrears due to Creditor pursuant to 11 U.S.C. §§ 1325(a)(1) and 1322(b)(3).

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

Because the Plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

Attorney's Fees and Costs Requested

Though requested in the Motion, Creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Motion. Creditor is not awarded any attorney's fees and costs.

29. 11-41986-B-13 KATHY VASEY
APN-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
3-24-15 [92]

SANTANDER CONSUMER USA, INC.
VS.

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

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

The Motion for Relief From the Automatic Stay is granted.

Santander Consumer USA, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2007 Honda Accord, VIN ending in -09771 (the "Vehicle"). The moving party has provided the Declaration of Marianne Favors ("Favors Declaration") to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor. Movant asserts that the total amount owing to it is $9,298.77 and that the Debtor is past due in 32 post-petition payments in the total amount of $4,320.00.

In response, Debtor states that she will convert to a Chapter 7, intends to retain the vehicle, and intends to reaffirm the debt secured by the Creditor. It is also worth noting that the Movant failed to timely file a proof of claim. The deadline to file a proof of claim was April 25, 2012, and Movant's proof of claim was filed on April 26, 2013.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court concludes that the failure to make 32 post-petition payments is sufficient cause for relief under 11 U.S.C. § 362(d)(1).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is likely no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Since the Debtor intends to convert to a Chapter 7 case, the Vehicle is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Santander Consumer USA, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.

No other or additional relief is granted by the court.

30. 13-31487-B-13 KEVIN/CATHERINE BUTLER
JPJ-1 Richard A. Chan

OBJECTION TO CLAIM OF FAY SERVICING, LLC, CLAIM NUMBER 6
3-5-15 [30]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The objection to proof of claim has been set for hearing on at least 44-days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The Objection to Proof of Claim Number 6 of Fay Servicing, LLC is sustained and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Fay Servicing, LLC ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $607,180.73. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is January 2, 2014, for non-governmental creditors and February 26, 2014, for governmental units. Notice of Bankruptcy Filing and Deadlines, Dkt. 9.

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

The deadline for filing a Proof of Claim in this matter was January 2, 2014. The Creditor's Proof of Claim was filed January 7, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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

31. 14-27787-B-13 RUBEN/LINDA RODRIGUEZ MOTION TO SELL
CA-2 Michael David Croddy 4-1-15 [26]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to 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.

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtors ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Movant proposes to sell the property described as Emma's Taco House (the building and equipment), the land under the restaurant, and the alcohol license.

The proposed purchasers of the property are Cindy Chen and Winnie Leung ("Buyers"). Movant seeks permission to approve the sale of the building, equipment, and land at $525,000.00 to Ms. Chen and Ms Leung, and the sale of the liquor license at $18,000.00 to Ms. Chen and Ms. Leung. The proceeds of said sale, some $60,000.00 to $70,000.00, are to be paid to the Trustee in their entirety. The property is located at 1613-1609-1601 Sacramento Avenue, West Sacramento, California. The sale includes License 47, sale general eating place License #528811.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

32. 15-20788-B-13 DANIEL MIRANDA
JPJ-2 Michael O'Dowd Hays

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
3-19-15 [24]

Final Ruling: No appearance at the April 22, 2015 hearing is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure § 703.140(a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

33. 14-21394-B-13 PATRICK/SUZANNE CLARK MOTION TO MODIFY PLAN
SDB-4 W. Scott de Bie 3-10-15 [71]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the 35-days' 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).

The Motion to Confirm the Modified Plan is denied without prejudice.

S & J Advertising, Inc. ("Corporation") has filed a response to the Debtors' motion. Debtors challenge Corporation's standing to object. The court previously stated that the Corporation has standing in this case on the basis that it is a defendant in a suit against it by the Debtors and, therefore, a party in interest. *In re Moody*, 837 F.2d 719, 724 (5th Cir. 1988). As such, the Corporation may object to confirmation of the Debtors' third plan. *See* FRBP 3017; LBR 3015-1(c), (d). Regardless, the court independently may also determine whether the plan has been proposed in good faith and not by any means forbidden by law. *See* FRBP 3015(f).

The Corporation states in its response that it "does not oppose confirmation of a Plan that provides for valuation of the Debtors['] 50% interest in a corporation (S&J Advertising, Inc.) ("Corporation"), and use of sale proceeds to fund a plan, including appropriate treatment of professionals." Debtors contend this is a non-opposition to confirmation and, thus, the court need not consider the Corporation's response further. Debtors ignore that part of the Corporation's response that states "the proposed third Plan does not comply with 11 U.S.C. § 1325(a)(1) because it does not comply with the provisions of the Code relating to employment and compensation of professionals," and the Corporation's request that "confirmation of the Debtors['] Third Plan be conditioned on appropriate disclosure and treatment of litigation counsel, and appropriate disclosure of value of the Debtors['] stock." Considering the latter language, the court construes the Corporation's response as an objection to confirmation under 11 U.S.C. § 1325(a)(1) on the basis that the Debtors' third plan does not comply with applicable code provisions, specifically §§ 327, 329, and 330, as they relate to the Debtors' retention of state court counsel to prosecute an action against the Corporation. The Corporation raises a valid point regarding professionals.

The court is not persuaded by the Debtors' argument that § 329(a) applies only to pre-petition payments and/or agreements. The critical period for mandatory disclosure under § 329(a) by an attorney who has performed services for a debtor in connection with a bankruptcy case is "after one year before the date of the filing of the petition." Thus, as § 329(a) has a beginning point, *i.e.*, after 1 year before the date of the filing of the petition, and no endpoint courts have construed it to require disclosure of both pre- and post-petition payments and/or agreements. *In re Whitcomb*, 479 B.R. 133, 130 (Bankr. M.D. Fla. 2012); *see also Rittenhouse ve. Eisen*, 404 F.3d 395, 397 (6th Cir. 2005) (holding that § 329(a) applies to both pre- and post-petition attorney's fees); *Savaria v. Drummond (In re Savaria)*, 317 B.R. 395, 400 (9th Cir. BAP 2005) (explaining that the phrase "after x years before the date of the filing of the petition" as used in § 329(a) is derived from former § 60d of the Bankruptcy Act which encompassed pre- and post-petition periods); *In re Ramos*, 2006 WL 2850409 (Bankr. E.D. Cal. 2006) (phrase "after x years before the date of the filing of the petition" denotes a period of indefinite duration that begins x years before the petition is filed). Therefore, even if the Debtors' state court attorney will not seek compensation under § 330 in this case because he was not employed under § 327 and even if the Debtors engaged that attorney post-petition, § 329(a) requires disclosure of all compensation paid and/or to be paid to that attorney by the Debtors in connection with the Debtors' action against the Corporation over the Debtors' corporate shares and any other matter concerning this case. Absent those mandatory disclosures, the third plan fails to comply with § 1325(a)(1) which means confirmation of the third plan must and will be denied.

The court need not reach valuation issues regarding the Debtors' corporate shares not

properly before it other than to state the schedules should reflect an accurate value and the price at which those shares are sold may be an indication of that value. The court also leaves for another day any consequences, if any, of non-disclosure under § 329(a) other than the denial of confirmation of the third plan.

34. 15-20997-B-13 FRANCESCA PENROSE
DPR-1 David P. Ritzinger

MOTION TO VALUE COLLATERAL OF PAUL FINANCIAL, LLC
3-23-15 [14]

Final Ruling: No appearance at the April 22, 2105 hearing is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Paul Financial, LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Francesca Penrose ("Debtor") to value the secured claim of Paul Financial, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 911 Linden Avenue, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $399,862.00 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.

The first deed of trust secures a claim with a balance of approximately $489,782.00. Creditor's second deed of trust secures a claim with a balance of approximately $71,821.54. 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 payment 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.

35.	12-27398-B-13 JLB-2	BRUCE/PAULETTE CREAGER James L. Brunello	MOTION TO APPROVE LOAN MODIFICATION 3-23-15 [47]

Final Ruling: No appearance at the April 22, 2015 hearing is required. CONTINUED TO 4/27/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS