

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

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

1. 16-20901-C-13 ALICIA GADDIS OBJECTION TO CONFIRMATION OF
 KLF-1 Mitchell Abdallah PLAN BY CHAMPION MORTGAGE
 COMPANY
Also #2 3-25-16 [30]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2016. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Champion Mortgage Company dba Nationstar Mortgage LLC opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

Discussion

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's

residence. By altering Creditor's altering the pre-petition arrearage amount owed, the Plan violates 11 U.S.C. § 1322(b)(2)'s anti-modification provision. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by Champion Mortgage Company dba Nationstar Mortgage LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. Twenty-eight days notice is required. That requirement was met.

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

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

Trustee's Responses

The Chapter 13 Trustee opposed confirmation and then withdrew the opposition on account of the debtor filing an amended plan.

Discussion

The debtor has filed an amended plan thereby making this motion to confirm moot. Accordingly, the motion is denied.

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

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

The Motion to Confirm the 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.

3. 15-29602-C-13 REGINA JAMES
AP-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
PENNYMAC LOAN SERVICES, LLC
2-4-16 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 4, 2016. Fourteen 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 . . .

PennyMac Loan Services, LLC opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

Previous

At the initial hearing held on 3/1/16, Creditor stated that the monthly payment is \$1,188.00 a month. Based on the Debtor's opposition at the hearing and the clarifications from Creditor, the hearing was continued to 2:00 p.m. on April 12, 2016, for final hearing. Opposition was ordered to be filed and served on or before March 18, 2016, and Replies, if any, filed and served on or before April 12, 2016.

The parties are engaged in settlement discussions and are presently drafting an order confirming plan that would resolve any issues.

Discussion

If at the hearing, the parties have reached a settlement and have remedied issues in a proposed order confirming, the court will confirm the plan.

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 PennyMac Loan Services, 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 . . .

4. 15-29802-C-13 GWENDOLYN WHITE
MMN-1 Michael Noble

MOTION TO CONFIRM PLAN
3-8-16 [24]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Creditor Wells Fargo Bank, N.A.'s Opposition

Creditor Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b) (2)'s anti-modification provision.

Debtor's Nonopposition

Debtor agrees to conform the plan to terms of Creditor's mortgage contract.

Discussion

Pursuant to 11 U.S.C. § 1322(b) (2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By altering Creditor's contractual interest rate, the Plan violates 11 U.S.C. § 1322(b) (2)'s anti-modification provision. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

The 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.

5. 16-21406-C-13 MARTIN/NORA CRANE
HDR-1 Harry Roth

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
3-21-16 [14]

Also #6

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2016. Twenty-eight 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 Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 395 Del Monte Ave., Rio Vista, California. The Debtor seeks to value the property at a fair market value of \$272,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$277,233.54. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$130,634.77. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 395 Del Monte Ave., Rio Vista, 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 \$272,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2016. Twenty-eight 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 Dell Equipment Funding, L.P., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a XPS 8700 - High Performance Desktop Computer. The Debtor seeks to value the property at a replacement value of \$250.00 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 computer's title secures a purchase-money loan. As of the date that this motion was filed, a claim has not been filed by Creditor. To the extent that the respondent creditor's claim exceeds \$250.00, the secured lien is under-collateralized. The creditor's secured claim is determined to be in the amount of \$250.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Dell Equipment Funding, L.P. secured by a purchase-money loan recorded against a XPS 8700 - High Performance Desktop Computer is determined to be a secured claim in the amount of \$250.00, and the balance of the claim is a general unsecured claim. The value of the computer is \$250.00.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2016. Twenty-eight 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 CCO Mortgage, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 11143 Jordan River Ct, Rancho Cordova, California. The Debtor seeks to value the property at a fair market value of \$310,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$324,000. CCO Mortgage's second deed of trust secures a loan with a balance of approximately \$69,799. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CCO Mortgage secured by a second deed of trust recorded against the real property commonly known as 11143 Jordan River Ct, Rancho Cordova, 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 \$310,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on April 5, 2016. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-21683) was filed on March 3, 2015 and dismissed on February 21, 2016, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Here, Debtor asserts that Debtor fell ill during his previous case and was hospitalized for 2.5 weeks and incapacitated for 15 weeks. During that time period, an entrusted relative failed to make the plan payments and instead stole Debtor's money. The claim against that individual, although likely uncollectible, is scheduled as a possible claim.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that he secured a tenant to move into his house and help with the bills as a means of garnering extra income for plan feasibility.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 29, 2016. 14 days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Willie Smith ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The principal, interest, and monthly escrow payment is \$1,368.14. This represents a \$226.86 reduction in Debtor's monthly mortgage payment.

The Motion is supported by a Declaration that 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.

The Chapter 13 Trustee filed a statement of nonopposition.

Discussion

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

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

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

The Motion to Approve the Loan Modification filed by Willie Smith having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Willie Smith ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, which is secured by the real property commonly known as 317 Promenade Cir., Suisun City, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 39.

10. 15-26843-C-13 ENRICO MENDOZA
KMT-1 Stephen Murphy

CONTINUED EVIDENTIARY HEARING
RE: OBJECTION TO CONFIRMATION
OF PLAN BY A.I. HOLDINGS, LLC
10-23-15 [18]

DEBTOR DISMISSED: 04/13/2016

Also #11

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. Twenty-eight days notice is required. That requirement was met.

The Objection to Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 overrule the Objection as moot.

A.I. Holdings, LLC ("Creditor), an unsecured creditor, opposes confirmation of the Plan on the basis that the Plan is not feasible. A.I. Holdings, LLC's claim is valued at \$93,436.66, and the proposed \$880 monthly payment will not pay off A.I. Holdings, LLC's claim and the other unsecured creditors. The Plan only includes approximately \$3,100 for A.I. Holdings, LLC's claim. In fact, A.I. Holdings, LLC's claim is \$93,436.66.

Furthermore, the Plan, which proposes to pay \$880 per month, does not satisfy the "Disposable Income" test. The debtor's monthly disposable income under section 1325(b)(2) is \$2,865.98 according to his bankruptcy petition. (Form 22C-2.)

Debtor's Response

Debtor entered into a pre-petition lease with A.I. Holdings for space located in a multi-tenant commercial building.

Debtor missed a payment for rent to A.I. Holdings because he could no

longer afford to make the payments.

Debtor attempted to mitigate damages to A.I. Holdings by locating potential new tenants for the Leased Premises. On August 6, 2015, Debtor made a written request to assign or sublet the Leased Premises to potential new tenants. Exhibit 2. A.I. Holdings denied Debtor's request. In A.I. Holding's failure to approve or consider new tenants for the Leased Premises, it failed to mitigate its own damages.

Debtor listed the Lease as a pre-petition unexpired lease rejected in the bankruptcy in his bankruptcy petition(see docket #1). Debtor's Chapter 13 Plan also rejects the Lease. Please refer to section 3 of the Chapter 13 Plan (see docket #5).

Debtor filed an Objection to Proof of Claim #5 filed by A.I. Holdings, LLC. The matter is set for hearing on December 15, 2015, at 2:00 p.m. (see matter below)

Creditor's Response

Debtor Mendoza argues that the lease required monthly payments of \$3,121.85 per month beginning in November 2014 through October 2019. However, the addendum to the lease, attached to the Exhibit List as Exhibit B states that the monthly lease payments increased to \$3,246.73.1 According to the summary of the claim amount, attached to the proof of claim, and applying the increased monthly lease payment as of November 2015, capped at one year from the filing of the bankruptcy, September 2015-August 2016, the claimed for missed commercial lease payments is \$41,832.85.

A.I. Holdings attempted to mitigate its loss, but all parties interested in the space have declined to rent.

Mr. Mendoza's removal of walls and doors, and damage to the leased premises is in excess of \$42,000. The damage is pictorially documented. Mr. Mendoza objects to paying damages that were incurred due to his early termination of the lease.

Paragraph 13.2(a) of the Lease Agreement, attached as Exhibit A to the Exhibit List originally filed, provides for the recovery of reasonable attorneys' fees incurred to recover damages owed by Mr. Mendoza. A.I. Holdings paid an attorney \$150 to prepare the letter itemizing the amounts owed and the basis for no return of the deposit. The remainder of the attorneys' fees identified were associated with preparing the proof of claim, and does not cover additional fees incurred for the Objection to the Plan, which is also recoverable. (Claire Decl., ¶ 6.) Such fees are recoverable in a bankruptcy proceeding.

Discussion

Because the court has continued the hearing on the Objection to Claim, the hearing on this Objection to Confirmation was also continued.

The Debtor was dismissed on April 13, 2016. Therefore, the Objection is moot and is denied.

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

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

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

IT IS ORDERED that the Objection to Confirmation is overruled as moot.

11. 15-26843-C-13 ENRICO MENDOZA
SNM-1 Stephen Murphy

CONTINUED EVIDENTIARY HEARING
RE: OBJECTION TO CLAIM OF A.I.
HOLDINGS, LLC, CLAIM NUMBER 5
10-27-15 [27]

DEBTOR DISMISSED: 04/13/2016

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, all creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2015. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to overrule the Objection as moot.

Enrico Mendoza, the Debtor, ("Objector") requests that the court disallow the claim of A.I. Holdings, LLC ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$93,436.66. Objector asserts that the claim is disallowed as it is based on a rejected lease.

On July 22, 2014, Debtor entered into a pre-petition lease with A.I. Holdings for space located in a multi-tenant commercial building commonly known as 4851 Lone Tree Way, Suite A-2.

Debtor listed the Lease as a pre-petition unexpired lease rejected in the bankruptcy in his bankruptcy petition (see docket #1). Debtor's Chapter 13 Plan also rejects the Lease. Please refer to section 3 of the Chapter 13 Plan (see docket #5).

Trustee's Nonopposition

The Chapter 13 Trustee has no opposition to the Objection to Claim.

Legal Standard

Section 502(a) provides that a claim supported by a Proof of Claim is

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

Previously

At the hearing, the creditor appeared and stated that the "opposition" had been filed in the form of the objection to confirmation. The court noted that such did not comply with the pleading rules. However, rather than summarily sustaining the objection, and being presented with a motion for relief pursuant to Federal Rule of Civil Procedure (60)(b) and Federal Rule of Bankruptcy Procedure 9024, the court continues the hearing for further consideration.

Creditor's Opposition

After the hearing on December 15, 2015, the Creditor filed an opposition. Dkt. 46.

A.I. Holdings, LLC entered into a commercial lease for a period of 5 years, ending October 30, 2019, with monthly lease payments of \$3,121.85 until November 2015, and \$3,246.73 until November 2016, and increasing thereafter. The lease also required Debtor to pay utility costs, prorated for the space leased, of approximately \$75 per month. (Lease, attached to Proof of Claim, Debtor's Exhibit 1, pp. 4-25; Supp. to Lease, attached to Proof of Claim, Debtor's Exhibit 1, pp. 26-28.)

Debtor was offered an inducement of 3 months lease payments, totaling \$9,365.55, which was subject to repayment if the lease terminated early. (Lease, attached to Proof of Claim, Debtor's Exhibit 1, ¶¶ 1.4, 3.2, 13.3.) On August 6, 2015, Debtor terminated the lease. At that time, damages included the rent inducement, the August rent, unpaid utility costs, and the cost of repairing the leased premises, and removing abandoned property. (See Lease, attached to Proof of Claim, Debtor's Exhibit 1, ¶¶ 4, 7.4(c); 11, 13.3.) By the time that Mr. Mendoza filed for bankruptcy, he also owed interest, late charges, and attorneys' fees pursuant to the Lease. (Lease, attached to Proof of Claim, Debtor's Exhibit 1, ¶¶ 13.2(a), 13.4, 13.5.)

Future Rent Is Recoverable

As the Debtor points out, a landlord's claim for damages is determined by state law and the terms of the lease and then limited by 11 U.S.C. section 502(b)(6). Section 502(b)(6) does not limit any other damages - section 502(b)(6) only puts a cap on the rent component of the landlord's claim.

Debtor cites to *City Farmers Trust Co. v. Irving Trust Co.*, 299 U.S. 433 (1937) in support of the argument that no future rents are recoverable by a creditor landlord. However, this case does not stand for the proposition that future rent is not recoverable. Indeed, the U.S. Supreme Court held that the landlord could recover future rent in keeping with the contract and New Jersey law.

Federal bankruptcy law continues to allow the recovery of one year of lease payments after the filing of the bankruptcy. (11 U.S.C. § 502(b)(6).) This is exactly what AI Holdings included - rent from September 2015 through August

2016.

Creditor Did Not Fail to Mitigate Damages

Debtor argues that AI Holdings did not mitigate its damages by re-letting the leased premises to prospective tenants identified by Debtor. This is based on a false factual premise. The email communications with the proposed tenants make clear that the proposed tenants would not lease the premises, even under favorable lease terms. (Claire Supp. Decl., ¶ 2.) Moreover, AI Holdings has been unable to lease the space yet. (Martin Decl., ¶ 8.)

Creditor's Claim Can Include Non-Lease Damages

Debtor also argues that AI Holdings cannot claim damages that AI Holdings suffered which are not lease payments. California law permits the recovery of damages outside of future rent. See *Lu v. Grewal*, 130 Cal.App.4th 841, 850 (2005); *In re El Toro Materials Co., Inc.*, supra, 504 F.3d at 980.

Debtor Significantly Damaged the Property

Debtor claims he made minor changes to the drywall and drilled ten small holes in the floor near the wall. This flies in the face of the photographs that show that Debtor took down walls, removed doors and windows, and change the neutral paint scheme to a red and blue paint scheme. (Martin Decl., ¶¶ 2-5.) Since the estimate prepared by Williamson Ranch Office Repair, AI Holdings has incurred over \$5,000 to make the space presentable to potential tenants by re-painting the suite and removing the wall that hung a few inches from the ceiling and fixing the ceiling tiles. (Claire Supp. Decl., ¶ 4.)

Discussion

The Debtor was dismissed on April 13, 2016. Therefore, the Objection is moot and is denied.

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

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

The Objection to Claim of A.I. Holdings,
LLC, Creditor filed in this case by Enrico
Mendoza, 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 Objection to Proof of
Claim Number 5 of A.I. Holdings, LLC is overruled
as moot.

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 March 8, 2016. Forty-two days' notice is required. That requirement was met.

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

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

Creditor's Opposition

Wilmington Savings Fund Society opposes confirmation of the Plan on the basis that Movant holds a senior mortgage secured by the debtor's principal residence, and the plan proposes payment that modifies the contractual terms of the loan in violation of 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

Trustee's Nonopposition

The Chapter 13 Trustee filed a statement of nonopposition.

Discussion

Pursuant to 11 U.S.C. § 1322(b)(2), a Chapter 13 plan may not modify the contractual rights of a homelender holding a senior mortgage on a debtor's principal residence. By failing to provide for the payment of prepetition arrearages, the Plan violates 11 U.S.C. § 1322(b)(2)'s anti-modification provision.

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

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

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

The 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,

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 March 30, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor did not appear at the First Meeting of Creditors held on March 24, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
3. The plan fails to provide for the secured debt of Safe Credit Union listed on Schedule D.

4. The Debtor improperly added language to the form plan on page 5 rather than on a separate appended paper.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Thru #16

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 March 30, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. The plan fails to provide for the secured debt of Nationstar Mortgage LLC listed on Schedule D.
2. The plan misstates the monthly debt owed to Class 4 creditor Travis Credit Union.
3. The plan fails the chapter 7 liquidation analysis.
4. The Debtor is over the median income and proposes a 0% dividend to unsecured creditors. Form B22C reflects negative net disposable income; however, based on the Trustee's calculations, the form reflects a positive net disposable income of \$1,111 for 60 months.

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Tentative Ruling: The Objection to Discharge 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 March 30, 2016. Fourteen days' notice is required. That requirement was met.

The Objection to the Discharge 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.
--

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on November 18, 2015 (Case No. 15-26352). Debtor filed this Chapter 13 case on February 5, 2016.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case

filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-26352.

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 March 31, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Secured Creditor Solano First Credit Union opposes confirmation of the Plan on the basis that Creditor financed Debtor's purchase of a recreational vehicle (R.V.) and the Plan fails to provide for the unsecured portion of the debt owed.

The balance due on the subject loan, as of the date of the filing of the petition, was \$85,303.60. Debtors valued the property at \$66,850 in their Schedules. The Plan proposes to surrender the collateral but fails to provide for payment of the unsecured claim. Debtors are not entitled to a discharge of the unsecured debt due to their previous discharge (see matter #15 above). Debtor has equity in nonexempt rental property which can be used to pay Creditor's claim.

The court has considered the Creditor's concerns and finds them

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

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

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

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

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

17. 11-46659-C-13 KEVIN/SELENA BISBY
GW-4 Gerald White

MOTION FOR COMPENSATION FOR
GERALD L. WHITE, DEBTORS
ATTORNEY(S)
3-18-16 [103]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. 28 days' notice is required. This requirement was met.

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

Gerald L. White, the attorney ("Applicant") for Debtors Kevin and Selena Bisby ("Client"), makes a Final Request for the Allowance of Fees and Expenses in this case. Debtors and Debtors' counsel entered into a retainer agreement, setting the terms for representation, Dckt. 107, Exhibit A. Debtors agreed to pay for a rate of \$250-\$300 per hour. The total fees and costs approved in this case are \$5,407.00.

Here, Applicant seeks an additional \$375.00 in fees for 1.25 hours of work, and no monies in costs. The sum of \$474.50 is currently held in trust for post-petition attorney's fees and/or costs. The services provided were for normal post-confirmation services, such as case management, reviewing and responding to communication to Debtors, Trustee, creditors, and the court. Dckt. 107, Exhibit B. Applicant seeks court permission to withdraw the requested \$375.00 from the funds held in trust.

CHAPTER 13 TRUSTEE

On March 21, 2016, the Chapter 13 Trustee filed a statement of non-opposition.

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. Here, the court has reviewed the fees requested, finds them to be reasonable and in service of the bankruptcy estate.

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

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

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

IT IS ORDERED that Gerald L. White, counsel for Chapter 13 Debtors, is allowed the fees in the amount of \$375.00 and costs in the amount of \$0.00 for post-confirmation services.

18. 16-20667-C-13 HARRIS WALKER
DPC-1 Michael Noble

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-23-16 [16]

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 March 23, 2016. Fourteen days' notice is required. This requirement was met.

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

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

Chapter 13 Trustee, David Cusick, opposes confirmation of the Plan on the basis that Debtor may not be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's schedule I lists "Rent from Hand in Hand Fou [sic]" of \$500 per month. Debtor testified at the First Meeting of Creditors that Hand in Hand is a non-profit corporation that Debtor owns. Schedule I does not disclose any other business income from this source. Debtor has not filed a business income and expense attachment to Schedule I, provided any profit or loss statements, or any other business or financial information to Trustee such as IRS form for tax-exempt organizations. The Trustee does not have sufficient information to determine if Debtor can make plan payments or if Debtor could possibly pay more to unsecured creditors.

On April 12, 2016, Chapter 13 Trustee filed an updated status with the court. The Trustee's records show that on March 28, 2016, Debtor's counsel

emailed Trustee attaching copies of profit and loss reports dates August 2015, September 2015, October 2015, December 2015, and January 2015. These reports do not reveal the name of the business entity and are not signed. A review shows that the average monthly income totals \$5,066.12 and average monthly expenses totaling \$5,325, a net loss of (\$258.88). A search on the California Secretary of State website returns a search for Hand & Hand Foundation, Inc., showing Harris Walker as the agent for service of process, and states that the status of business is "FTB forfeited." A search on the Nevada Secretary of State website shows that Hand & Hand Foundation, Inc., with Harris Walker, Jr. as the registered agent. The detail indicates that the status of the business is "revoked."

DEBTOR'S RESPONSE

Debtor responds to the objection, stating that Debtor "MAY not be able to make his plan payments." Trustee expresses concern that he may not receive the rent money to pay his plan payments. Debtor provided proof that he has received rent from Hand & Hand, a non profit organization. Debtor's declaration, Dckt. 24, provides that the non-profit is an organization that pays Debtor rent of \$500 per month for over a year, and is expected to continue to do so for the rest of Debtor's plan terms. In the last six months, Hand in Hand ran a small deficit of less than \$50 a month. Debtor is working to expand the services offered by partnering with local businesses and expects net income to increase. Hand and Hand is not required to file tax returns, and Debtor did file an online statement with the IRS for the 2014 and 2015 tax years stating no return was required.

DISCUSSION

Trustee has raised a valid concern regarding Debtor's connection to the Hand & Hand Foundation, Inc., and the effect that Debtor's fiscal relationship with this organization will have on plan payments. Debtor has failed to sufficiently address this relationship, and the court remains concerned that Debtor may not be able to make plan payment under 11 U.S.C. § 1325(a) (6).

First, the court is not satisfied that the \$500 per month listed in schedule I, upon which the Debtor relies as monthly income, will be a stable source of income for the length of the plan. Indeed, the profit/loss information provided by Debtor to Trustee shows that the organization, which purportedly pays Debtor \$500 per month in rent, returns a net loss. Debtor explains that he expects that Debtor plans on expanding services, however such intentions do not necessarily translate to a steady increase in profits for the business to be able to support the plan.

Next, that the non-profit organization does not appear to return an active status on the California or Nevada business search websites is of concern as to the viability and sustainability of the organization. The California website returns that the status of "Hand & Hand Foundation, Inc." is "FTB Forfeited." The California Secretary of State website provides that "FTB Forfeited" means that the business entity was forfeited by the Franchise Tax Board for failure to meet tax requirements. Yet, Debtor alludes that the business "is not required to file tax returns." The Nevada status reads as "revoked," and while the court is unclear what this means, such sentiments are not promising to the longevity and ability of the business to return a steady profit and income to Debtor.

Finally, Debtor's own responsive motion states that Debtor "MAY not be

able to make his plan payments." Debtor's own dubious assurances further reflect that Debtor may not be able to make plan payments under 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.

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

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

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

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

19. 15-22968-C-13 ROBERT WAGNER
AFL-4 Bruce Rorty

MOTION FOR PROTECTIVE ORDER
AND/OR MOTION TO QUASH
4-12-16 [168]

Final Ruling: No Appearance at the April 26, 2016 hearing is necessary.

The Motion for Protective Order 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. Fourteen days' notice is required. That requirement was met.

The Motion for Protective Order was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). On April 25, 2016, the court entered an order ruling on the instant discovery motion. As such, a hearing is not required.

No hearing is required on the Motion for Protective Order and/or Motion to Quash.
--

Creditor, The Law Offices of Allan R. Frumkin, seeks an order quashing discovery request and issuance of a protective order against Debtor's discovery request. The Debtor issued a discovery request, requesting Creditor respond within 14 days to certain admissions, Exhibit A, Dckt. 171, interrogatories, Exhibit A, Dckt. 171, and production of documents, Exhibit A, Dckt. 171.

Creditor argues that Debtor has propounded discovery in this case in violation of Local Rule 7026-1 and has arbitrarily set a 14 days deadline to respond. Creditor asserts that first, Debtor does not have the authority to open discovery, which must be done by the court, and second, Debtor does not have authority to set a 14 day deadline to respond to discovery, which must also be done by the court.

DISCUSSION

On April 22, 2016, this court entered an order on the instant motion, Dckt. Control No. AFL-04, and thus a hearing on this motion is not required.

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 Protective Order filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

No hearing is required on the instant Motion for Protective Order and/or Motion to Quash, the court having already rendered its decision on the motion.

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 March 23, 2016. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Chapter 13, David Cusick, opposes confirmation of the Plan on the basis that Debtor failed to appear and be examined at the first meeting of creditors on March 17, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to April 14, 2016.

On April 19, 2016, Trustee filed an amended objection. Trustee provides that Debtor appears at the continued meeting on April 14, 2016. However, Debtor's schedule E/F lists an unsecured debt to The Law Division of Fidelity National Title Group for \$116,173.81 and indicates that this is a "judgment for Fidelity Natl Title Ins Co." Debtor admitted at the continued meeting of creditors held April 14, 2016 that this debt is actually a secured debt. Debt was not listed on schedule D and is not provided for in the plan. If this debt is secured, then either the Debtor has additional property that has not been disclosed securing this debt, or this debt is secured by some of Debtor's scheduled property. It is not clear whether the

Debtor can afford the plan payments without knowing what property this creditor may collect against.

DISCUSSION

The court agrees that the uncertain nature of the judgment for Fidelity National Title Group for \$116,173.81, and whether it is secured against some real property that is scheduled or not scheduled. This raises concerns as to whether Debtor will be able to afford the plan payments, which at this point does not account for the \$116,173.81 judgment, and if such judgment is secured, whether Debtor is able to or will be moving to take action on the secured status.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2016. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. According to Trustee's calculations, the plan will complete in 69 months as opposed to 60, exceeding the maximum amount of time permitted under 11 U.S.C. § 1322(d). This appears to be due to the higher than anticipated secured claim of Deutsche Bank National Trustee Company for mortgage arrears in the amount of \$20,259.28 where Debtor has scheduled this debt at \$13,383.00.
2. Section 2.07 proposes \$0.00 monthly dividend for administrative expenses, where Debtor's attorney's fees remain to be paid. Under the confirmed plan, \$2,000 was paid by Debtor prior to the filing of the case with \$2,000 to be paid through the plan, the plan payments were \$1854.66 with \$1,487.00 to be paid each month on the ongoing mortgage claim. Because the Debtor became delinquent, the plan has

only paid money to the ongoing mortgage payment. The current monthly dividend to administrative expenses which is Debtor's attorney fees is \$200, where Debtor now proposes in the amended plan to pay \$0 per month and \$2000 remains to be paid.

The court acknowledges and agrees that Trustee has raised valid concerns as to the confirmability of the proposed modified plan. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 25, 2016. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Nissan Motor Acceptance, "Creditor," is granted.
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The Motion filed by Patricia Pennunuri ("Debtor") to value the secured claim of Nissan Motor Acceptance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Nissan Rogue ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 10, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$25,767.41. 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 \$14,000. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Patricia Pennunuri ("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 2013 Nissan Rogue ("Vehicle") is determined to be a secured claim in the amount of \$14,000, 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 and is encumbered by liens securing claims which exceed the value of the asset.

23. 16-20383-C-13 GIANNE/RUBY -ROSE APURADO MOTION TO AVOID LIEN OF
JME-6 Julius Engel CITIBANK, NA
3-24-16 [53]

Thru #25

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on March 24, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Citibank, N.A. for the sum of \$5,015.86. The abstract of judgment was recorded with Placer County on May 18, 2011. That lien attached to the Debtor's residential real property commonly known as 3240 Village Plaza Drive, Roseville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$361,000 as of the date of the petition. The unavoidable consensual liens total \$387,870.84 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$5,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank, N.A., Placer County Superior Court Case No. MCV46434, recorded on May 18, 2011, with the Placer County Recorder, against the real property commonly known 3240 Village Plaza Drive, Roseville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

24. 16-20383-C-13 GIANNE/RUBY -ROSE APURADO MOTION TO AVOID LIEN OF
JME-7 Julius Engel CITIBANK, NA
3-24-16 [58]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on March 24, 2016. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Citibank, N.A. for the sum of \$3,172.86. The abstract of judgment was recorded with Placer County on June 30, 2011. That lien attached to the Debtor's residential real property commonly known as 3240 Village Plaza Drive, Roseville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$361,000 as of the date of the petition. The unavoidable consensual liens total \$387,870.84 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$5,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C.

§ 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank, N.A., Placer County Superior Court Case No. MCV46937, recorded on June 30, 2011, with the Placer County Recorder, against the real property commonly known 3240 Village Plaza Drive, Roseville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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 March 7, 2016. Forty-two days' notice is required. That requirement was met.

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

Chapter 13 Trustee, David Cusick, opposes confirmation to the extent that Debtors cannot afford to make plan payments under 11 U.S.C. § 1325(a)(6), so long as the court does not grant Debtors' two Motions to Avoid the Liens of Citibank, N.A. If the motions are not granted, the court should deny Debtor's confirmation.

DISCUSSION

The court has granted Debtors' Motions to Avoid Lien of Citibank, N.A., Dckt Control Nos. JME-6 and JME-7. The Trustee's basis for opposition having been resolved, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 7, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 16-21283-C-13 CRAIG MAKISHIMA
CLH-1 Cindy Lee Hill

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
3-25-16 [12]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 25, 2016. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of the Internal Revenue Services, "Creditor," is granted.
--

The Motion filed by Craig Makishima, Debtor, seeks to value the secured claim of the Internal Revenue Service ("Creditor"), and is accompanied by the Debtor's declaration.

On March 24, 2016, the Creditor IRS filed a proof of claim no. 1 asserting a secured claim of \$240,000 and an unsecured debt of \$339,304, of which unsecured amount \$3,467 is said to be entitled to priority treatment. Debtor believes the debt attaches to his home, vehicles and his interest in his solely owned corporation.

The Debtor is the owner of the subject real property commonly known as 914 Cobbleshore Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$770,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The first deed of trust secures a loan with a balance of approximately \$672,750. The second deed of trust secures a loan with a balance of approximately \$750,525. Therefore, there is no equity in the real property to which the Creditor IRS claim can attach.

The Debtor is owner of a 2009 Mercedes Benz, and seeks to value the automobile at a replacement value of \$25,000 as of the filing of the petition 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 in the amount of \$24,450. In addition, Debtor asserts the two other vehicles which are titled in his name are in title only and the equitable title is in other parties. The vehicles are described as a 2003 Grand Jeep Cherokee and a 2006 Lincoln Navigator. The Jeep Cherokee was paid for a driven by Debtor's eldest daughter and titled in his name because Debtor's daughter purchase the vehicle as a minor. Debtor estimates its value at approximately \$3m750. Debtor's corporation purchased a 2006 Lincoln Navigator, and title was placed in Debtor's name as a requirement for purchase. Debtor asserts his business has made all payments , and asserts a value of \$11,025.

The Debtor asserts an interest in a solely owned corporation, Craig S. Makishima DDS, a Professional Corporation, formed in 2009. Debtor is the sole shareholder. Debtor asserts that his interest in the corporation, including equipment, goodwill, and debts, nets approximately \$240,000

Debtor thus asserts that the value of the collateral securing the Creditor IRS's claim is \$240,000. The court further notes that there appears to be not dispute between Debtor and the Internal Revenue Service as to the secured amount of \$240,000, as Creditor IRS in Proof of Claim No. 1 states the secured amount of debt to be in the amount of \$240,000, in accord with the amount presented here.

The creditor's secured claim is determined to be in the amount of \$240,000.00, and the reaminder is determined to be unsecured in the amount of \$339,304. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of the Internal Revenue Service secured by Debtor's interest in a solely owned corporation known as Craig S. Makishima DDS, a Professional Corporation, is determined to be a secured claim in the amount of \$240,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Craig S. Makishima DDS, a Professional Corporation is \$240,000, and is encumbered by senior liens securing claims which exceed the value of the Property.

27. 16-20787-C-13 JERRY JORS
WW-1 Mark Wolff

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA
4-6-16 [21]

Also #28

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 6, 2016. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Santander Consumer USA, "Creditor," is granted.

The Motion filed by Jerry Jors ("Debtor") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Chevy Malibu ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,114 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 07/12/12, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,000. 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 \$6,114. 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 Jerry Jors ("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 2010 Chevy Malibu ("Vehicle") is determined to be a secured claim in the amount of \$6,114, 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 \$6,114 and is encumbered by liens securing claims which exceed the value of the asset.

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 March 30, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to overrule the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has not filed a motion to value the collateral of a creditor upon which the Debtor's plan relies, and if the court does not grant, the Debtor cannot afford to make plan payments pursuant to 11 U.S.C. § 1325(a)(6).

DISCUSSION

Subsequent the Trustee filing this Objection, Debtor filed a Motion to Value the Collateral of Santander Consumer, USA, Dckt. Control No. WW-1, which the court has granted. Trustee's basis for objection having been resolved, the plan is confirmed.

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

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

holding that:

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on February 12, 2016 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

29. 16-20689-C-13 LOUISE CALDWELL
Scott Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY THE GOLDEN 1 CREDIT
UNION
3-16-16 [16]

Also #30

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 16, 2016. Twenty-eight days' notice is required. That requirement was met.

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

Creditor, The Golden 1 Credit Union, holds a promissory note secured by a deed of trust encumbering real property commonly known as 1407 Michael Way, Roseville, California. Creditor opposes confirmation of the Plan on the basis that Debtor's plan fails to provide for Creditor's claim whatsoever. The plan fails to provide for the pre-petition arrears owed to Creditor in the amount of \$1,436.83.

The court have evaluated Creditor's concern and finds it to be valid. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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 March 30, 2016. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan does not provide for the secured claim of Golden One Credit Union, who holds a first deed of trust. Without knowing if the Debtor intends to make these payments and keep the residence, Trustee cannot determine if the Debtor can afford plan payments or if the plan is Debtor's best efforts.

The court agrees that the secured first deed of trust of Golden 1 Credit Union, and Debtor's failure to account for it, raises a valid concern. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 24, 2016. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of ANZ Guam, Inc. dba ANZ Amerika Samoa Bank, "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as Masefau Village American Samoa, and more fully described as:

All that certain real property lying in Land Square 11, Unit B, situated in the Village of Masefau, County of Sua, Eastern District, Island of Tutuila, American Samoa, being a portion of land known as Mosooi, owned by Chanel Limutau, more fully described as follows: Beginning at a point which has coordinates of X=276854.70 and Y=313635.67 based on American Samoa Datum of 1962. Run then on azimuth 146 o2' 13" distance 60.0' to a point. Thence on azimuth 236 21' 34", distance 60.00' to a point. Thence on azimuth 056 21' 34", distance 60.0' to the point of beginning. Containing 1600 sq. ft. or 0.083 acres more or less.

Hereinafter referred to as "Subject Property." The Debtor seeks to value the Subject Property at a fair market value of \$90,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$119,082.28. ANZ Guam, Inc. dba ANZ Amerika Samoa Bank's second deed of

trust secures a loan with a balance of approximately \$13,615.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of ANZ Guam, Inc. dba ANZ Amerika Samoa Bank's secured by a second deed of trust recorded against the real property commonly known as Masefau Village American Samoa, 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 \$90,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. 14 days' notice is required. This requirement was met.

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

The Motion to Impose the Automatic Stay is granted.
--

Joshua Johnson and Marilyn Johnson ("Debtor") seeks to have the provisions of the automatic stay imposed in the instant case pursuant to 11 U.S.C. § 362(c)(4)(B). This is the Debtor's third bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-20128) was dismissed on September 15, 2015, after Debtor failed to comply with a civil minute order on Trustee's Objection to Confirmation of Plan and Conditional Motion to Dismiss, Dckt. 35, in which the Debtors were ordered to obtain confirmation of an amended plan within 75 days of the date of entry of the order. See Order, Bankr. E.D. Cal. No. 15-20128, Dckt. 61, June 9, 2015.

The Debtor's other prior bankruptcy case (No. 15-24736) was dismissed on December 29, 2015, after Debtor failed to comply with a civil minute order on Trustee's Objection to Confirmation of Plan and Conditional Motion to Dismiss, Dckt. 52, in which the Debtors were ordered to obtain confirmation of an amended plan within 120 days of the date of entry of the

order. See Order, Bankr. E.D. Cal. No. 15-24736, Dckt. 79, December 29, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A), the provisions of the automatic stay never went into effect upon the filing of the instant case.

If, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith, but may be rebutted by clear and convincing evidence to the contrary. *Id.* at § 362(c)(4)(D)(i)(I). Furthermore, 11 U.S.C. § 362(c)(4)(D)(ii) "provides that the later case is presumed to be filed in bad faith as to any creditor who sought relief from the automatic stay in a previous case of the debtor and the stay relief motion was, at the time of dismissal of such previous case, pending before the court or resolved with an order terminating, conditioning or limiting of the stay." 3 COLLIER ON BANKRUPTCY ¶ 362.06[4] (Alan N. Resnick & Henry J. Sommer, eds., 16th ed.).

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtors state that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtors state that both the previously dismissed cases were dismissed due to the failures of their previous counsel, Mr. Julius Engel, to transmit required information to the Chapter 13 Trustee and to timely file amended plans and/or motions to confirm plan in both those cases. Debtors contend that they provided their attorney with the necessary documents, however Trustee's office did not receive said documents. Debtors were performing under the terms of the only plan filed on their behalf by Debtor's counsel, Mr. Engel, but because of their counsel's inability to comply with the condition orders of the court, Debtors did not have the legal skill or knowledge to prepare their own motions, amended plans, or related documents which resulted in their case being dismissed. Furthermore, Debtors asserts there has been a substantial change of circumstances in the financial or personal affairs of the Debtors since dismissal of the previous cases, where here Debtors' proposed plan provides for an aggregate amount that is sufficient to provide for creditors pursuant to the terms of the proposed plan.

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

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

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

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

The Motion to Impose the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the automatic stay is imposed pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

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 March 30, 2016. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
2. Debtor lists the Internal Revenue Service claim in Class 5 of the plan for \$19,732.00. However the IRS filed a priority claim in the amount of \$89,069.90 on March 19, 2016. While Debtor may attempt to resolve with by stipulation with the IRS, Trustee is not aware if this has been filed yet with the court, and Trustee wants to make certain what amount Trustee is to pay the IRS.

3. The priority claim of the IRS indicates that Debtor has not filed all her tax returns for the 4 years preceding the filing of this petition. Specifically her 2014 tax return has not been filed, see 11 U.S.C. §§ 1308 and 1325(a)(9).

DEBTOR'S RESPONSE

Debtor responds to Trustee's objection, stating that (1.) Debtor is finishing up 2014 taxes and will be submitting them to Trustee prior to hearing; (2.) Debtor and IRS stipulated regarding the portion of taxes not paid upon completion of the plan, resolving the second basis for objection; and (3.) the order confirming plan will specify and include language regarding the stipulation.

DISCUSSION

Although Debtor has stated that certain actions will be taken (i.e. that the 2014 taxes will be filed and submitted to Trustee), and that other actions have already been taken, (i.e. that Debtor and IRS have stipulated as to amount owed through the plan), Debtor has provided no evidence upon which the court may rely authenticating these facts or actually showing that the issues raised by Trustee have been resolved.

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

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

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

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

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