

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

July 28, 2015 at 2:00 P.M.

1. [15-23903](#)-C-13 ROBERT/MOIRA TRABERT MOTION TO CONFIRM PLAN
MLA-2 Mitchell Abdallah 6-10-15 [[34](#)]

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 June 10, 2015. 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.

Trustee's Opposition

The debtor proposes to value the secured claim of Presto Auto Loans, but has not filed a motion to value collateral.

Discussion

As the Trustee's concerns highlight, the Plan complies 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 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.

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 July 1 2015. 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 -----
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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. The Plan fails to provide for the IRS claim (# 1-1).
3. Debtor may be over the unsecured debt limit, which totals \$383,175, for Chapter 13 eligibility. The IRS filed an unsecured claim in the amount of \$931,805.70, and Debtor list unsecured debts as "unknown"

on Schedules E and F.

4. Debtor does not explain the nature of the restitution expense on Schedule J so that the court can determine the Debtor can makes plan payments.

Debtor's Opposition

Debtor submitted to the Trustee the required tax returns.

Discussion

While Debtor's opposition addressed the Trustee's first concern, other concerns remain. As the Trustee's remaining concerns highlight, 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.

3. [15-23915](#)-C-13 ELIZABETH ARMAS
TJW-1 Timothy Walsh

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING
6-17-15 [[17](#)]

Final Ruling: No appearance at the July 28, 2015. hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 17, 2015. 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 Green Tree Servicing, "Creditor," is denied.

Summary of Motion

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 925 Valla Vista, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$254,000 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 \$476,755. Green Tree Servicing's second deed of trust secures a loan with a balance of approximately \$66,366. 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.

Discussion

The docket does not reflect evidence that Green Tree Servicing holds a secured claim in the amount of \$66,366. Movant has not submitted exhibits

with the motion. Nor has Green Tree Servicing filed a proof of claim.

Before the court adjudicates this motion to value, it must be sure that it has the real parties in interest before it. Green Tree Servicing is a loan servicer and therefore may not be a creditor in this case. Movant must submit evidence that Green Tree Servicing is the owner or holder of the note at issue before the court can consider granting the motion to value.

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 denied.

Tentative Ruling: The Motion to Incur Debt 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, all creditors, and Office of the United States Trustee on July 13, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is denied.

The motion seeks permission to purchase a 2014 Chrysler 200 sedan with 33,000 miles for the total purchase price of \$15,325.44, with an APR of 20.99% and a monthly payment of \$379.12.

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

Trustee's Amended Opposition

The Chapter 13 Trustee objects to the motion on the basis that:

1. The purchase is due to one of Debtors' existing vehicles no longer running, but the motion does not specify the non-running vehicle.
2. The motion states that Debtors will reduce their food expenses by \$349.88 to accommodate the proposed auto loan payment. Debtor's monthly food budget is \$725 for a family of free.
3. Debtors fail to state how many vehicles they looked at prior to this one.

Discussion

The Debtor does not address the reasonableness of incurring debt to purchase an almost new vehicle. Debtors have not presented evidence of alternate vehicles eligible for purchase to demonstrate that this vehicle is their most prudent option.

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge - 20.99%. Moreover, it is unclear how Debtors will feed a family of 3 with after reducing their food budget by 50%.

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

IT IS ORDERED that the Motion is granted and Sean and Lia Duncan, Debtors, are not authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dckt. 19.

5. [11-32430](#)-C-13 ROOSEVELT/RAULETTE
BLG-11 MCCLINTON
Pauldeep Bains

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
6-1-15 [[155](#)]

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

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 the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 1, 2015. 28 days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is denied.

The Motion to Approve Loan Modification filed by Debtor seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing ("Creditor") has agreed to a loan modification. The terms of the modified loan will be as follows:

Starting June 1, 2015 the interest rate will change to 3.37500%. The monthly principle and interest payment amount will be \$938.43 plus the estimated monthly escrow amount of \$378.71 (adjusts annually after 1 year) for a total monthly payment of \$1,317.14. The monthly Payment will begin July 1, 2015. The number of monthly payments will be 261 (maturity date of March 1, 2037). The new principle balance of the note will be \$481,589.54 of which \$234,589.54 will be deferred and treated as a non-interest bearing principle forbearance. The deferred principle balance is eligible for forgiveness provided there is no default on payments such that the equivalent of three monthly payments are due and unpaid on the last day of any month, on each of the first, second and third anniversaries of April 1, 2015, the Servicer

shall reduce the deferred principal balance in installments equal to one-third of the deferred principle reduction amount. Provided that all payments are made in accordance with the loan terms and the interest rate does not change for the entire loan term a balloon payment of \$153,284.26 will be due on March 1, 2037.

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

Trustee's Opposition

The Trustee does not oppose the terms of the loan modification. Rather, the Trustee is uncertain that the loan modification offeror is the holder of the existing note.

Wells Fargo Bank, N.A. filed Claim 2 indicating that it is the holder of the note. A Transfer of Claim Other than for Security was filed (Dckt. 104) transferring the claim to Wells Fargo Association, c/o Ocwen Loan Servicing, LLC with an attached Limited Power of Attorney allowing American Home Mortgage Servicing, Inc. with power over certain transactions (which does not appear to include loan modifications).

Discussion

The court is not prepared to approve the loan modification until the Trustee's concerns are addressed.

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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied and court does not authorize Roosevelt McClinton ("Debtor") to amend the terms of the loan with Ocwen Loan Servicing, which is secured by the real property commonly known as 1005 Blackspur Ct, Suisun City, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 155.

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 July 1 July 21, 2015, 2015. 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 -----
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The court's decision is to sustain the Objection.

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

1. Debtor is \$225 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$225 is due on July 25, 2015. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not appear at the First Meeting of Creditors held on June 25, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
3. 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).

4. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
5. Schedule J is inconsistent with the plan, and the plan fails to provide for the total amount of the IRS priority tax claim.

As the Trustee's concerns highlight, 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.

7. [13-32449](#)-C-13 ARNULFO CHAVEZ AND MARIA MOTION TO MODIFY PLAN
JMC-3 ALMANZA 6-10-15 [[69](#)]
Joseph Canning

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 June 10, 2015. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to 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. The amended Schedule I, (dckt. 73), reflects that Debtors' combined income has been reduced by \$349. There is no explanation provided in the motion or the declaration for this reduction, and it appears both Debtors employment information is unchanged.

As the Trustee's concern highlights, 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.

Thru #10

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 June 10, 2015. 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 the instant Motion to Confirm Plan on the basis that Debtor cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on two motions to value the collateral of the Franchise Tax Board and the Internal Revenue Service, pursuant to section 6 of Debtor's plan. To date, Debtor has not filed the motions, and if they are not filed and granted, Debtor's plan does not have sufficient monies to pay the claims in full and therefore should be denied confirmation.

DISCUSSION

Following the filing of Trustee's opposition, Debtors filed with the court a Motion to Value Collateral of the Franchise Tax Board, Dckt. , and a Motion to Value Collateral of the Internal Revenue Service, Dckt. . The court has granted both of these motion, resolving Trustee's only basis for objection. 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 June 10, 2015 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.

9. [15-20851](#)-C-13 ROBIN SMITH
FF-3 Brian Turner

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
7-14-15 [[54](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Value secured claim of Internal Revenue Service, "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 2943 Betien Court, Rancho Cordova, California. The Debtor seeks to value the property at a fair market value of \$191,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$236,882.66.

The Debtor also has an interest in a number of assets and values these assets as follows:

| | |
|--|---------|
| Cash | \$25 |
| Checking Account | \$890 |
| Savings Account | \$25 |
| Mich. Household Goods & Furnishings | \$1,500 |
| Office Furniture | \$100 |
| Misc. Books, DVDs, CDs | \$150 |
| Clothing | \$300 |
| Misc. Costume Jewelry | \$100 |
| 1997 Honda Accord | \$1,033 |

The Debtor seeks to value the property at a fair market value of \$4,123 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the assets' value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor believes and asserts that the Internal Revenue Service and the Franchise Tax Board hold valid security interest in all of the equities in this estate by virtue of the perfection of a tax lien recorded pre-petition. The Internal Revenue Service tax lien was filed June 29, 2011. The Franchise Tax Board lien was next filed April 11, 2012. Therefore, the Internal Revenue Service tax lien is senior in priority to the Franchise Tax Board tax lien. The Internal Revenue Service tax lien is in the amount of \$77,602.91. Proof of Claim No. 1.

Therefore, the respondent creditor's tax lien, given the first deed of trust on the real property, is under-collateralized. The creditor's secured claim is determined to be in the amount of \$4,123.00, the amount of value of Debtor's personal property. 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 a tax lien recorded against Debtor Robin Smith's real and personal property, is determined to be a secured claim in the amount of \$4,123.00, and the balance of

the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the personal property is \$4,123.00 and is encumbered by liens securing claims which exceed the value of the Property.

The court makes no determination as to whether the general unsecured portion of the Internal Revenue Service tax lien is entitled to priority pursuant to 11 U.S.C. § 507(a).

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

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

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

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

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

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

The Motion to Value secured claim of Franchise Tax Board, "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 2943 Betien Court, Rancho Cordova, California. The Debtor seeks to value the property at a fair market value of \$191,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$236,882.66.

The Debtor has an interest in a variety of assets and values these assets as follows:

| | |
|--|---------|
| Cash | \$25 |
| Checking Account | \$890 |
| Savings Account | \$25 |
| Mich. Household Goods & Furnishings | \$1,500 |
| Office Furniture | \$100 |
| Misc. Books, DVDs, CDs | \$150 |
| Clothing | \$300 |
| Misc. Costume Jewelry | \$100 |
| 1997 Honda Accord | \$1,033 |

The Debtor seeks to value the property at a fair market value of \$4,123 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the assets' value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor believes and asserts that the Internal Revenue Service and the Franchise Tax Board hold valid security interest in all of the equities in this estate by virtue of the perfection of a tax lien recorded pre-petition. The Internal Revenue Service tax lien was filed June 29, 2011. The Franchise Tax Board lien was next filed April 11, 2012. Therefore, the Franchise Tax Board tax lien is junior in priority to the Franchise Tax Board tax lien. The amount due on the Franchise Tax Board tax lien was not specified in the motion.

Therefore, the respondent creditor's claim secured by a junior tax lien 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 the Franchise Tax Board secured by a tax lien recorded against Debtor Robin Smith's real and personal property, 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 personal property is \$4,123.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

The court makes no determination as to whether the general unsecured portion of the Internal Revenue Service tax lien is entitled to priority pursuant to 11 U.S.C. § 507(a).

Tentative Ruling: The Motion to Incur Debt 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, all creditors, and Office of the United States Trustee on June 29, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to purchase real property commonly known as 5011 Strasbourg Way, Sacramento, California, which the total purchase price is \$185,000, with monthly payments not to exceed \$2,500 (the principal and interest, all impounds, taxes, insurance, association fees, and bonds and other assessments). The payments on the loan will be on the primary loan of \$181,649 for a term of 30 years. The fixed interest rate on the loan is 4.5%, and the principal, interest, and mortgage insurance payment is \$1,045.92. The payment will include an amount for escrow, which will cover property taxes and property insurance, in the amount of \$224.14. Therefore the complete monthly payment will be \$1,270.06. Debtor will incur a new loan, for which she has fully approved, Exhibit A, Dckt. 27; Exhibit F, Dckt. 31.

Further, to cover costs and down payment, Pacific First Mortgage will also be providing debtor with a Silent 2nd (in the amount of \$6,500) and 3rd

(in the amount of \$3,362). Exhibit D, Dckt. 27; Exhibit G, Dckt. 31. The details of this silent 2nd will be provided to the court upon receipt of final approval.

Debtor is current on plan payments, and has submitted a declaration demonstrating that debtor has the ability to pay all future plan payments, projected living expenses, and the new debt. Upon this motion being granted, Debtor will file a modified plan and motion to modify plan. Debtor states that she is currently renting a mobile home and wishes to purchase the real property for the well being of herself and her daughter.

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

On July 8, 2015, the Chapter 13 Trustee, David Cusick, filed a statement of no opposition to this Motion to Incur Debt.

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

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

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

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

IT IS ORDERED that the Motion is granted and Hope Lynn Haley, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit G, Dckt. 31.

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 June 11, 2015 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.

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 June 16, 2015. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to 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. Debtors have not made all payments required under 11 U.S.C. § 1325(a)(2). Debtors are delinquent \$1,042.32 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$32,469.60 have become due, where this case was filed on November 12, 2012 and 31 payments have become due. Debtors have paid a total of \$31,427.28 to Trustee with the last payment posted on June 30, 2015 in the amount of \$1,200.
2. Section 6.1 of Debtors' proposed modified plan does not correctly represent the amount of the prior amounts of Debtors' mortgage payments. Debtors state "Class two creditor Guild Mortgage will receive ongoing mortgage payments in the amount of \$780.03 month through December 2015. Beginning in January 2015 Guild Mortgage Company will receive \$934.85 per month." Guild Mortgage Company is a

Class 1 creditor and has been paid ongoing mortgage payments of \$780.03 per month from December 2012 through February 2014, \$788.03 from March 2014 through December 2014, then \$934.85 from January 2015 through present. Mortgage payment changes were filed with the court, Dckt. 59.

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 July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on June 16, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [14-25165](#)-C-13 MARK ALLEN
GG-5 Gerald Glazer

MOTION TO SUBSTITUTE DECEASED
PARTY
6-27-15 [[78](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 26, 2015. 28 days' notice is required. That requirement was met.

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

The Motion to Substitute is granted.

Deceased Debtor's Personal Representative, Marc Stephen Allen, seeks an order approving the motion to substitute the Personal Representative for the deceased Debtor, Mark Allen.

The Debtor filed for relief under Chapter 13 on May 15, 2014. On August 31, 2014, the Debtor's Chapter 13 Plan was confirmed. Dckt. 41. On January 20, 2015, Debtor Mark Allen passed away. The Personal representative asserts that he is the administrator and representative of the deceased Debtor's estate with full authority to sign all pleadings as necessary.

The Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on April 2, 2015. Dckt. 61. Personal Representative is the son of the deceased party and is the lawful representative. Personal Representative states that he wishes to convert the bankruptcy to a chapter 7 bankruptcy.

CHAPTER 13 TRUSTEE

On July 10, 2015, Chapter 13 Trustee filed a statement of no opposition to the instant motion.

DISCUSSION

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

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

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

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

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion

of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

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

Here, Personal Representative Marc Allen has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 61. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Personal Representative, Marc Allen, as the son of the deceased party and is the lawful representative may continue to administer the case on behalf of the deceased debtor, Mark Allen. The court grants the Motion to Substitute Party.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Marc Allen is substituted as the successor-in-interest to Mark Allen and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

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 June 11, 2015. 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.

Chapter 13 Trustee, David Cusick, objects to confirmation of Debtor's proposed plan on the following basis:

1. The Motion to Confirm does not comply with the requirements of Fed. R. Bankr. P. 9013, as it does not plead with particularity the grounds upon which the requested relief is based. Fed. R. Civ. P. 7(b) states the same, "plead with particularity" requirements for motions and complaints. The motion gives a brief summary of the plan and alleges no significant factual matters under 11 U.S.C. § 1325(a)(1)-(9).
2. While Debtor has filed a declaration in support of this motion, the declaration does not provide sufficient evidence to prove all components of 11 U.S.C. § 1325(a).
3. Debtor's plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor filed an amended schedule J on June 11, 2015, Dckt. 40. The Debtor added a \$50 home maintenance expense, increase personal care by \$1, medical and dental by \$15, and transportation by \$50. It is not clear why Debtor added and increased expenses. Debtor's monthly net income listed schedule J totaling \$594.67. Debtor's proposed monthly plan payments are \$542.83 for 3 months and \$581.63 for 57

months.

4. The chapter 13 first amended plan, Dckt. 33, section 6 additional provisions provides "Additional Provisions ARE NOT appended to this plan." However, a 6 page plan was filed by Debtor.

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

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

17. [15-21378](#)-C-13 RUSSELL BESSONETTE
BHS-2 Barry Spitzer

MOTION TO CONFIRM PLAN
6-12-15 [[39](#)]

Also #18

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 June 11, 2015 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.

18. [15-21378](#)-C-13 RUSSELL BESSONETTE
BHS-3 Barry Spitzer

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
6-12-15 [[44](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 12, 2015. 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 PNC Bank, N.A., "Creditor," is denied as moot.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 13629 Thorne Lane, Grass Valley, California. The Debtor seeks to value the property at a fair market value of \$125,000 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 \$181,674. PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$36,397.28. 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.

STIPULATION

On July 1, 2015, Debtor and Creditor PNC Bank, N.A. filed a stipulation with the court setting forth recitals and resolving the instant motion. The stipulation provides that Creditor shall have an allowed unsecured claim in the amount of \$36,397.28, to be paid by Chapter 13 Trustee pursuant to the

terms of the plan. Creditor shall file a deed of reconveyance releasing the Deed of Trust within 30 days receipt of notice from Debtor of his discharge entry. All other terms, provisions, obligations, covenants, agreements, rights and remedies under the Note and Deed of Trustee remain in force and effect. In the event of dismissal or conversion of this chapter 13 case, the modification terms of the Creditor's secured claim in the amount of \$36,397.28 by the terms of this Stipulation shall be deemed null and void without further hearing from the court.

The court granted the stipulation and entered the order on July 8, 2015. Dckt. 53.

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 denied as moot, stipulation having been entered into between the parties and approved by the court on July 8, 2015.

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 June 1, 2015. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to 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. Debtor does not appear to be able to make payment required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$1,220.21 under the terms of the proposed plan. \$20,024.81 has become due under the proposed plan. Debtor has paid a total of \$18,804.60 to date with the last payment of \$884.10 posted June 8, 2015. Trustee notes the Debtor's confirmed plan and proposed modified plan are dependant on the debtor making a large lump sum payment annually. Debtor was unable to make the May 2015 lump sum payment. Additionally, Debtor depends on a monthly contribution from his parents of \$2,000. Debtor offers no explanation of where the annual lump sum payments comes from.
2. Debtor's Motion to Confirm does not comply with applicable law, and the motion does not cite an applicable code provisions such as 11

U.S.C. § 1329, which is required under Local Rule 9014-1(d), and Fed. R. Bankr. P. 9013.

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 July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 4, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Proof of Claim Number 1 of the Internal Revenue Service is sustained and the unsecured claim in the amount of \$3,1703.60 is disallowed priority status.

Jose and Elsie Simpao, the Chapter 13 Debtors, ("Objector") requests that the court disallow the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured priority in the amount of \$3,1703.60. Objector asserts that the Claim is for taxes that are due for a taxable year more than three years prior to the filing of the bankruptcy case and for which taxes were assessed more than 240 days prior to the filing of the case.

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).

Discussion

Unsecured claims for a governmental tax on or measured by income enjoy priority status to the extent that (1) a tax return, if required, is last due, after three years before the date of the filing of the petition and (2) the tax is assessed within 240 days before the date of the filing of the petition. 11 U.S.C. § 507(A) (8).

Objectors/Debtors filed this Chapter 13 case on October 22, 2013.

The Claim asserts priority status for income taxes in the amount of \$3,1703.60 for years 2005 and 2006--taxable years that are more than three years prior to the filing of Debtors' case. Further, the Claim states that the taxes were assessed in April and November 2008 which is more than 240 days prior to the filing of Debtors' case.

Based on the evidence before the court, the creditor's claim unsecured claim in the amount of \$3,1703.60 is disallowed priority status. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of the Internal Revenue Service, Creditor filed in this case by Jose and Elsie Simpao, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 1 of the Internal Revenue Service is sustained, and the unsecured claim in the amount of \$3,1703.60 is disallowed priority status.

21. [14-31199](#)-C-13 BRIAN LUMPKINS
DPC-1 Eric Schwab

OBJECTION TO CLAIM OF SUN
COMMUNITY FEDERAL CREDIT UNION,
CLAIM NUMBER 10
6-4-15 [[18](#)]

Final Ruling: No appearance at the July 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 4, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Proof of Claim number of 10-1 is sustained, and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Sun Community Federal Credit Union ("Creditor"), Proof of Claim No. 10-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$14,681.03. Objector asserts that the Claim has not been timely filed. *See Fed. R. Bankr. P. 3002(c)*. The deadline for filing proofs of claim in this case is March 18, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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).

Discussion

The deadline for filing a Proof of Claim in this matter was March 18, 2015. The Creditor's Proof of Claim was filed April 2, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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

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 Sun Community Federal Credit Union, Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 10-1 of Sun Community Federal Credit Union is sustained, and the claim is disallowed in its entirety.

Tentative Ruling: The Motion to Avoid Judicial 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. 28 days' notice is required. That requirement was met

The Motion to Avoid Judicial 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of Ronny Dhaliwal, Creditor, for the sum of \$285,000. An abstract of judgment was recorded with Sacramento County on December 12, 2013. That lien attached to the Debtor's residential real property commonly known as 9646 Rivage Way, Elk Grove, California.

OPPOSITION

Creditor opposes the motion on the basis that (1) the Debtor's schedules understate the value of the subject property; and (2) the motion misstates the Debtor's exemption as \$100,000 when the Schedules list the exemption amount as \$75,000.

REPLY

Debtor states that Creditor has submitted no admissible evidence with the Opposition that rebuts the Debtor's scheduled value of \$350,000. Further, Creditor has failed to request a continuance for an evidentiary hearing as required by the Local Rules.

PRIOR HEARING

Debtor asserts that Creditor's failure to request discovery results in the pleadings being closed and the court making its determination on the merits based on the pleadings filed. Creditor states that he wants to begin investigating obtaining an appraiser to value the property. Creditor has presented arguments as to why the evidence presented by Debtor is not credible.

Given the animosity between the parties and their respective attorneys, and the institutional knowledge of the judge to whom this matter is assigned, it was continued one week so that it may be heard personally by the Hon. Christopher M. Klein.

DISCUSSION

Because Creditor has not submitted admissible evidence with the Opposition to rebut Debtor's valuation, Debtor has met his burden of proof in establishing the value of the subject property. Accordingly, 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 \$350,000 as of the date of the petition. The unavoidable consensual liens total \$315,661.13 on that same date according to Debtor's Schedule D.

The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a) (2) in the amount of \$75,000 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 MINUTE ORDER

An 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 Ronny Dhaliwal, Sacramento County Court Case No. 34-2011-00103167, recorded in Sacramento County on December 12, 2013 against the real property commonly known 9646 Rivage Way, Elk Grove, 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.

23. [15-24061](#)-C-13 RANDY RICHARDSON AND
DPC-1 JACQUELYN

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-23-15 [[27](#)]

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 June 23, 2015. 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.

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that Creditor OWB REO LLC has filed a Motion for Relief from Automatic Stay, set for hearing on June 30, 2015, moving for stay relief with regard to real property commonly known as 7925 Rock Springs Road, Penryn, California. Dckt. 14. Trustee has opposed that motion. Although Trustee does not oppose confirmation of the Debtors' plan, the Motion for Relief from Automatic Stay before the court may render the plan not feasible.

June 30, 2015 Hearing

At the hearing on Motion for Relief from Automatic Stay referenced by Trustee above on June 30, 2015, Dckt. 14, the court noted the opposition presented by the Debtors and Trustee. Dckt. 34. The court then set a briefing schedule and set the final hearing on July 28, 2015 at 1:30 p.m. Because the present Objection to Confirmation is contingent upon whether the

court will grant Creditor OWB REO LLC's motion for stay relief on July 28, 2015, the court will continue the instant motion to take place concurrently with it on the same date of hearing.

DISCUSSION

The court has denied the Motion for Relief from Automatic Stay at the 1:30 hearing on July 28, 2015. Having denied the Motion for Relief from Automatic Stay, the Trustee's only basis for objection to the pending plan is resolved. The objection to plan 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 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 denied, and the proposed plan filed on May 19, 2015 is confirmed.
