UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 11, 2015 at 3:00 p.m.

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1. 14-26600-E-13 ALLAN HANSON — MOTION TO MODIFY PLAN
BLG-1 Pauldeep Bains — 6-23-15 [18]

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 23, 2015. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

Allan Hanson ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 23, 2015. Dckt. 18.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on July 28, 2015. Dckt. 25. The Trustee states that the Debtor's plan payments for months 1 through 19 as outlined in the additional provisions

are unclear. Section 6.01 relating to months 1-12 proposes payments of $900.00 per month for months 1 through 19. Section 6.01 relating to month 13-19 proposes payments of $1,085.00. The Trustee believes payments of $900.00 through month 19 is a type and Debtor is actually proposing payments of $900.00 per month through month 12. The Trustee is amicable to this being corrected in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. There is an ambiguity in the proposed plan as the plan payments for months 1-19. Specifically, it appears that the Debtor inadvertently listed plan payments of $900.00 for months 1 through 19 under the heading of Months 1-12. Underneath this section, the Debtor provides for monthly payments of $1,085.00 per month from months 13 through 19. The court agrees with the Trustee that this appears to be a scrivener's error that can be corrected in the order confirming.

Therefore, after the order confirming correctly states that plan payments for months 1 through 12 are $900.00 in Section 6.01; Section 1.01, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 23, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan and correcting plan payments to reflect $900.00 per month for months 1 through 12, 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.

2. 10-44204-E-13 IRMA SANCHEZ
MOH-6 Michael O'Dowd Hays

CONTINUED MOTION TO MODIFY PLAN AND/OR MOTION FOR ENTRY OF DISCHARGE
5-19-15 [91]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

Irma Sanchez ("Debtor") filed the instant Motion to Modify Chapter 13 Plan , Conclude Case, and Grant Discharge on May 19, 2015. Dckt. 91. The Debtor is seeking for the court to confirm the proposed plan, conclude her case with $19,159.00 being paid in and that the Debtor be granted discharge.

In the Motion, the Debtor provides a lengthy narrative of recent developments, including health problems, loss of job, moving to more affordable housing, and gaining employment at a lesser salary.

The Debtor states that she was in a 60 month plan, even though she qualified for a 36 month plan, so that the Debtor could pay the $9,624.00 value portion of the car claim, plus 6% interest and no less than 1% dividend to the unsecured creditors, plus the Trustee's and her attorney's compensation. The Debtor asserts that the obligation has been satisfied in less than 60 months because the amount of unsecured claims actually filed came to $11,579.25

instead of the original estimate of $56,619.00.

The Debtor argues that because she has satisfied her original commitment to her creditors in less time, was not legally required to be in a 60 month plan, and due to decrease in income, the Debtor is requesting to have her case concluded with the $19,159.00 already paid in with no further payments required.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on June 16, 2015. Dckt. 97. The Trustee argues that the Motion does not comply with applicable law because it is requesting multiple forms of relief. Additionally, the Trustee notes that the Debtor's Motion does not cite any applicable code sections, in violation of Local Bankr. R. 9014-1(d) and Fed. R. Bankr. P. 9013.

JUNE 30, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on July 21, 2015. Dckt. 105. The court ordered that the Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee a points and authorities directing the court to the applicable law and relief provided for under the Bankruptcy Code, and providing cogent, organized arguments why the evidence in this Contested Matter supports granting such relief.

JULY 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 11, 2015. Dckt. 109.

DISCUSSION

No new pleadings have been filed in connection with the instant Motion.

The court begins its analysis with the basic pleading issues identified by the court.

Failure to Comply with Fed. R. Bankr. P. 9013

At this court has repeatedly discussed, Federal Rule of Civil Procedure 7(b) and Federal Rules of Bankruptcy Procedure 7007 and 9013 require that a motion state with particularity both the grounds upon which the relief is based and the relief itself. In the fast-paced world of the bankruptcy law and motion calendar (in which most substantive law matters upon which a party's rights are determined, terminated, or modified) with fourteen to forty-two days notice, clear, accurate, and complete pleading in the motion is a necessity.

The Motion, Dckt. 91, now before the court states (as distilled by the court) the following grounds and relief with particularity: FN.1.

a. Debtor is a below median income Debtor, with an applicable commitment period of three years. Motion ¶ 1.

b. Under the existing confirmed plan Debtor is obligated to make payments of $9,625.00 for 60 months. Motion ¶ 1

c. Under the plan the Debtor was to surrender her residence and projected her ongoing rent to be $1,000.00. Motion ¶ 1

d. In 2013 Debtor began suffering from health issues which required surgery and prevented her from being employed. Debtor's disability benefits were $2,343.60 a month. Motion ¶ 2. FN.2. This is about $1,000 a month less than the Average Monthly Income show on Schedule I which Debtor stated on Schedule I.

e. When Debtor returned to work her employer laid her off in March 2014, allegedly due to "lack of work" and that a "full time employee [was] no longer required." Motion ¶ 3.

f. Debtor's unemployment benefits were approximately $1,680 a month. Motion ¶ 4.

g. In April or May 2014 Debtor obtained new employment, earning income in an unstated amount. Motion ¶ 4.

h. Debtor's employment income is now "quite a bit lower" than her former employment. Motion ¶ 5.

i. Her earning shown on the April 24, 2015 statement are $12,527.62 for the year to date, which average $3,132 monthly. Motion ¶ 5.

j. Debtor cannot explain the amounts for the deductions by her employer from her gross earnings. Motion ¶ 5. In projecting her current income, Debtor has used the lower deduction amounts shown on her pay statements. Motion ¶ 5.

k. While her income has been reduced by around $800 a month, so have her expenses, as she only has one child residing with her. Motion ¶ 6.

l. Debtor remains separated from her husband, and in the past twelve months he has provided only $2,000.00 in spousal and child support. Motion ¶ 7.

m. Debtor originally confirmed a 60 month plan in order to have an affordable payment, based on her income and expenses, to pay the $9,625 secured claim (car loan) and a minimal 1% divided to creditors with unsecured claims. Motion ¶ 8.

n. Debtor has been able to pay the secured claim in full and the 1% minimum dividend has been paid because the general unsecured claims filed in this case were only $11,579.35, much lower than the $56,619.00 Debtor projected in her plan. Motion ¶ 8.

o. Debtor has paid $19,159.00 into the Plan. This is alleged to have fund the plan in full (because of the much lower general

unsecured claims) without the payments having to be made over the full 60 months originally required. Motion ¶ 9.

p. Therefore, the relief requested is that:

i. The bankruptcy case not be dismissed (which is not the subject of the present Motion);

ii. The bankruptcy case be concluded with the $19,159.00 paid into the plan by Debtor (which is relief that the court cannot identify to any specific Bankruptcy Code sections); and

iii. Debtor be granted a discharge (which is something separate from the court addressing whether a plan has been completed).

Motion unnumbered, untitled paragraph after paragraph 9.

FN.1. The court notes that some of the confusion over the present Motion appears to arise because rather than stating with particularity the grounds upon which modification of the plan is proper (stating the grounds as required by 11 U.S.C. §§ 1329, 1325, and 1322), the motion is drafted in a manner in which long paragraphs argue multiple factual issues. Also, rather than stating grounds, the Motion contains arguments, which properly should be in the points and authorities in the context of legal authorities upon which the relief is based.

FN.2. Debtor states in the Motion that the benefits were $558.00 a week, which the court has extended to a monthly amount by multiplying the weekly amount of $2,343.60.

No Points and Authorities has been filed with the Motion. This leads to further confusion about what relief is being requested, as well as what grounds exist under applicable law for the relief requested. While the motion is titled (which is not part of the pleadings) “Motion to Modify,” no such relief is requested in the Motion. While one might “assume” that such can be inferred from the Motion, to do so requires the court to redraft the pleading for Debtor.

As the Trustee notes in his opposition, while the court or Trustee could assume, or state for the Debtor, the proper law, such is not the duty of either. As the court has phrased it in other unrelated cases, it is not the role of the court to advocate for parties in federal judicial proceedings, but rule on the matters presented to the court. It is inappropriate for a party to assign legal work to the court, such as in the present case, to advance relief for a party in the way the court best thinks it allows that party to prevail over other parties to the litigation.

Debtor may respond, “hey judge, I’ve regurgitated a bunch of really good sounding facts, you pick through it and find the parts you think sound the best, then assemble the law for me, and grant me the relief you advocate for me.” This highlights the deficiency in the pleading strategy of Debtor –

wanting to turn the court into one of Debtor's legal team. It appears that Debtor does not know why or how relief should be granted, and thinks that it should not be Debtor's counsel's duty to provide such services for Debtor.

No supplemental papers have been filed in connection with this matter since the continued hearing.

Much like the Debtor's numerous opportunities to cure the delinquencies or to propose a viable modified plan, the Debtor has failed to take advantage of the court's continuances. Instead, the Debtor has filed no supplemental papers to represent a good faith effort to prosecute this faith. The court, as discussed supra, is unable to determine what relief exactly the Debtor is seeking in the Motion which appears to ask for multiple forms of relief that are inherently incompatible. The Debtor has decided not to take the continuance granted by the court to evaluate her finances and propose a feasible plan or grounds for a hardship discharge.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

3. 10-44204-E-13 IRMA SANCHEZ
DPC-2 Michael O'Dowd Hays

CONTINUED MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
1-21-15 [58]

Tentative Ruling: The Motion to Dismiss 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 continue the hearing on the Motion to Dismiss to 10:00 a.m. on October 14, 2015.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 58.

The Trustee seeks dismissal of the case on the basis that the Debtor is $782.00 delinquent in plan payments, which represents multiple months of the $391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Irma Sanchez ("Debtor") filed a reply to the instant Motion on February 3, 2015. Dckt.62. Debtor replies as follows:

Debtor's confirmed Chapter 13 plan called for monthly payments of $391.00 for 60 months to pay the $9,625.00 value portion of the $18,863.00 claim of National Auto Finance and 1% of her unsecured claims which were estimated to total $56,619.00. The $9,625.00 claim is being paid with 6%

interest with a monthly dividend of $186.00 and a total of $11,16000 would have been paid at $186.00 monthly. The Debtor's plan also calls for payment of $2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor asserts that she has been paying "more" than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to $11,579.35, thereby resulting in the creditors who chose to act diligently and enforce their rights receiving more than the minimum 1% which was required of the Debtor. Additionally, the creditors who have acted diligently to assert their claims also benefit from the Chapter 13 Trustee's fee being computed on a lower 5.2% than originally projected by Debtor.

The Debtor asserts that a review of the "Case Profile" shows that the car creditor has actually been paid thru January 26, 2015 a total of $14,752.38 which is in excess of the $11,160.00 called for in the plan. No explanation has been provided for this over disbursement to the car creditor and apparent under disbursement to the creditors holding general unsecured claims.

Debtor asserts that it should not be necessary for the Debtor to propose and confirm an amended or modified plan when she has paid a sufficient amount to satisfy the requirements of her confirmed plan and she is not required to be in a plan of 60 month duration. If the court finds that a modified plan is necessary, the Debtor requests fourteen days to do so.

TRUSTEE'S REPLY

The Trustee filed a reply on February 10, 2015. Dckt. 65. The Trustee states the following:

1. The Debtor's confirmed plan calls for payments in the amount of $391.00 for 60 months with "no less than 1%" to the general unsecured creditors. Dckt. 10.

2. Debtor is currently delinquent in the amount of $1,173.00.

3. January was month 52. A total of $20,332.00 has come due through January 25, 2015. To date, Debtor has paid in a total of $19,159.00 with last payment of $391.00 on November 13, 2014.

4. The Trustee has review the confirmed plan and it states in Class 7, general unsecured claims are to be paid no less than 1% with no additional provision in the plan that would alter this treatment.

5. The Trustee has reviewed the order confirming the plan (Dckt. 50) and there is no language included that would alter this treatment.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing to April 1, 2015, to allow counsel to meet with his client and determine whether it is in the

Debtor's best interests to (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge. Dckt. 83.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on June 24, 2015 to allow the Debtor to file a proposed modified plan. Dckt. 86.

JUNE 24, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on June 30, 2015 to be heard in conjunction with the Motion to Confirm.

JUNE 30, 2015 HEARING

At the hearing, the court further continued this matter due to deficiencies in the pleadings in the related motion by which Debtor seeks to remedy the default.

Since the continuance, no supplemental papers have been filed in connection to this Motion nor any other.

JULY 21, 2015 HEARING

At the hearing, the court further continued this matter to 3:00 p.m. on August 11, 2015. Dckt. 110. The court further ordered that Debtor's counsel, Michael O'Dowd Hays, appear at the hearing, telephonic appearances permitted. Finally, the court ordered:

> **IT IS FURTHER ORDERED** that on or before August 7, 2015, Debtor shall file a Status Report advising the court, Chapter 13 Trustee, U.S. Trustee, and creditors of how she will prosecute this case, including: (1) whether she is electing to dismiss this case which has been pending for fifty-seven months; (2) if not dismissing, whether Debtor will file a motion to modify the plan; (3) if not dismissing, whether Debtor will file a motion for a hardship discharge; and (3) *Id.* not dismissing, whether Debtor will present evidence to the Trustee that the plan has been completed and a discharge may be entered thereon.

AUGUST 6, 2015 STATUS REPORT

On August 6, 2015, the Debtor filed a Status Report. Dckt. 112. The Debtor states that she never contemplated the option of electing to voluntarily dismissing her case and is not currently electing to do so. The Debtor, through

counsel, states,

> "I did not file any further evidence or judicial authority in support of the motion because I had no further evidence from my client and I did not find any case authority supporting the proposition that a below median income
> debtor be permitted to conclude her case in fewer months than the sixty proposed in her confirmed plan when the substantive requirements of her confirmed plan of her car creditor being paid the amount called for in her plan and her unsecured creditors having been paid 'no less than a l% dividend' have been met."

Status Report, p. 1:32; Dckt. 112.

Debtor's counsel further states,

a. "I did not appear on 7/21/15 to address the tenative [sic.] decision as I had nothing further to say that would persuade the Court to rule otherwise." *Id.*, p.2:1-3.

b. "I will not be filing any further motion to modify the plan." *Id.*, p.2:3-4.

c. "I have never contemplated filing a motion for a hardship discharge as I don't believe sufficient grounds exist for a hardship discharge." *Id.*, p.2:4-6.

d. "My argument was that she has paid what was required of her in less time and should be allowed to conclude her case in fewer months than the 60 originally proposed." *Id.*, p.2:12-14.

DISCUSSION

A review of the case shows that the Debtor remains delinquent. The Debtor is, at a minimum, $1,173.00 delinquent in plan payments, which represents multiple months of the $391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has been offered numerous continuances to remedy the deficiencies and: (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code. Yet, the Debtor has failed to successfully pursue any of these options.

Debtor and Debtor's counsel could have easily remedied this with a simple points and authorities actually identifying what actual relief is being requested and the legal basis for it. The court afforded Debtor and Debtor's counsel this opportunity in light of the Debtor being more than fifty months into this case. Rather than just denying the Motion without prejudice, the court afforded this opportunity to save the Debtor and counsel the time and expense of a new motion.

As show by the inaction of Debtor and Debtor's counsel, the opportunity

has been met with a response that smacks of, “we get the relief we demand, even though it doesn’t make sense, and don’t bother us to comply with the rules that apply to all other debtors and attorneys.” It is not unreasonable to require Debtor and Debtor’s counsel to identify the legal grounds upon which they base the relief, state those grounds, and support such grounds with evidence.

Dismissal of this case is warranted, but the court will not turn a blind eye to the extreme prejudice that such dismissal will work on this Debtor. While the court is unwilling to provide taxpayer subsidized legal services to Debtor, it will go even further to protect Debtor and Debtor’s counsel from themselves.

The court further continues this Motion to Dismiss to 10:00 a.m. on October 14, 2015. The court will order that this matter be referred to the U.S. Trustee for review and determination whether relief should be sought to remove counsel as counsel for the Debtor in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 10:00 a.m. on October 14, 2015.
>
> **IT IS FURTHER ORDERED** that the Clerk of the Court shall serve a copy of this Order, the Civil Minutes from the August 11, 2015 hearing on this Motion to Dismiss, and the Civil Minutes from the August 11, 2015 hearing and Order on the Debtor’s motion titled "Debtor's Motion to Modify Her Confirmed Chapter 13 Plan Conclude Case and Grant Discharge" (MOH-6).
>
> **IT IS FURTHER ORDERED** that the court refers this case to the U.S. Trustee for Region 17, attention Antonia Darling, Esq., for review of: (1) the representation provided by counsel for the Debtor; (2) the failure to seek either a modification of the plan to decrease the term from sixty months to a shorter period or modify the plan to waive several monthly defaults and reduce the plan payments for the remaining months of the sixty month term; (3) seek, in the alternative, a hardship discharge based on the plan payments made and an inability to modify the Plan; (4) whether counsel should be removed as counsel for Debtor; and (5) whether Debtor should be directed to a bankruptcy clinic operated by one of the regional law schools, Consumers’ Union, the Western Center on Law and Poverty, the County Bar Association, or other non-profit organization which provides pro bono or independent services to assist Debtor in finding replacement

counsel (if the U.S. Trustee's Office concludes that counsel should be removed from this case).

4. 15-25205-E-13 CJY-1 — WILLIE/JUDY MAY — Christian J. Younger — MOTION TO VALUE COLLATERAL OF SPRINGLEAF FINANCIAL SERVICES, INC. — 7-13-15 [16]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 13, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion to Value secured claim of Springleaf Financial Services, Inc. fka American General Financial Services, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Willie J. May and Judy A. May ("Debtors") to value the secured claim of Springleaf Financial Services, Inc. fka American General Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6709 Demaret Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $179,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The

ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Springleaf Financial Services, Inc. filed Proof of Claim No. 6, and on the Attachment it states that it was "fka American General Financial Services, Inc." Thus it appears that Springleaf Financial Services, Inc. is the creditor, notwithstanding the name disparity on the Note (American General Financial Services, Inc.), the name of the creditor on Proof of Claim No. 6 (not listing a "fka" for Springleaf Financial Services, Inc.), and the name of the creditor in the Motion (Springleaf Financial Servicing, Inc.) against whom the relief is sought.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $209,168.88. Creditor's second deed of trust secures a claim with a balance of approximately $19,156.21. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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 Willie J. May and Judy A. May (“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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Springleaf Financial Services, Inc., fka American General Financial Services, Inc., secured by a second in priority deed of trust recorded against the real property commonly known as 6709 Demaret Drive, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $179,000.00 and is encumbered by senior liens securing claims in the amount of $209,168.88, which exceed the value of the Property which is subject to Creditor’s lien.

5. 15-21707-E-13 JUDITH LAYUGAN MOTION TO SET PROPERTY VALUE
RS-2 Richard L. Sturdevant 7-6-15 [48]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 6, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bosco Credit, LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Judith Layugan ("Debtor") to value the secured claim of Bosco Credit, LLC("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 4448 "H" Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $450,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. The Motion filed by the Debtor is titled "Motion to Determine Value of Real Property Located at 4448 H Street, Sacramento, CA 95819 And for an Order Avoiding the Lien of Bosco Credit, LLC." This Motion suffers from several deficiencies.

First, the Motion is actually seeking for the court to value the secured claim of Creditor pursuant to 11 U.S.C. § 506(a), not merely "value the real property" for some abstract purpose. While it has become a common practice to inaccurately title such motions, it is actually a motion to value secured

claim.

Second, the Motion seeks multiple relief in one contested matter. The Motion seeks to have the court "avoid" the lien. Federal Rule of Civil Procedure 18, which allows for multiple claims for relief to be stated in one complaint is not incorporated into the contested matter practice in bankruptcy court. Fed. R. Bankr. P. 9014. Further, there is no basis for the court to issue a prospective order "avoiding" a lien. The Debtor has not completed the plan. Until the plan is completed, the valuation and payment of the claim in the amount determined pursuant to 11 U.S.C. § 506(a) is not final. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

Third, Debtor's counsel appears regularly in this court and is well aware of the Local Bankruptcy Rules and Revised Guidelines for Preparation of Documents that requires the motion, points and authorities, each declaration, and the exhibit document to be filed as separate pleadings. L.B.R. 9004-1 and Revised Guidelines for Preparation of Documents. Here, Debtor's counsel has included stock reference to multiple cases in the motion rather than preparing a points and authorities. Such citations, quotations, and arguments must properly be stated in a separate points and authorities in the Eastern District of California.

To the extent counsel believes that "this is really, really simple and it would be a waste of my (counsel's) time to prepare a points and authorities," the court's response is equally simple. If it is that easy, simple and straightforward, then counsel will have a simple form points and authorities which can be more easily completed then the court dissecting the citations, quotations, arguments, and speculation of a points and authorities from the motion. The court fairly and equally applies the Federal Rule of Civil Procedure, Federal Rule of Bankruptcy Procedure, Federal Rules of Evidence, and Local Bankruptcy Rules to all parties and pleadings, not leaving it for the attorneys to guess when they have to actually comply with the rules and when the court "let's it slide."

While the court is not denying this Motion for the failure to comply with the basic rules for preparation of documents, counsel should not take this as license to ignore the rules. If it happens again, it will be clear to the court that a hearing on the motion will be required, for which counsel's personal appearance (no telephonic appearance permitted) will be required to review the basic rules of practice in the Eastern District of California.

Debtor offers the Declaration of Jermone Thrower, a licensed real estate appraiser who opines that the value of the property is $450,000.00.

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff

> under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 7 filed by Bosco Credit LLC is the claim which may be the subject of the present Motion.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $492,388.75. Creditor's second deed of trust secures a claim with a balance of approximately $44,719.33. FN.2. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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.

FN.2. The court relies on the values provided in the proof of claim filed by the Creditors, as opposed to those provided by the Debtor in the instant Motion.

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 Judith Layugan

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bosco Credit, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 4448 "H" Street, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $450,000.00 and is encumbered by senior liens securing claims in the amount of $492,388.75, which exceed the value of the Property which is subject to Creditor's lien.

6. 15-24309-E-13 APN-1 | **KAREN PACOL** / **C. Anthony Hughes** | **OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-16-15 [28]**

THE PARTIES SHALL ADDRESS WHETHER THE ORDER CONFIRMING THE PLAN FILED ON JULY 28, 2015 (DCKT. 40) WAS LODGED IN ERROR AND SHOULD BE VACATED

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on June 16, 2015. By the court's calculation, 56 days' notice was provided. 14 days' notice is

required.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not provide for the Creditor's secured claim. The proposed plan lists the Creditor's secured claim at $7,219.00. However, the creditor contends that the correct amount owed is $10,392.76. The Creditor also objects that the adequate protection payments does not, in fact, adequately protect the Creditor due to depreciation. The Creditor also objects to the plan on the grounds that the proposed interest rate is insufficient under Till.

In sum, the Creditor's objection deals with the plan not providing for the Creditor's full secured claim. 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

Here, the Debtor has provided for the Creditor's claim in the proposed plan as a Class 2 claim in the amount of $7,219.00. The Creditor filed Proof of Claim No. 2 on June 10, 2015, listing the secured claim amount of

$10,392.76. It appears that the plan does not provide for the payment of the Creditor's entire claim and therefore, pursuant to 11 U.S.C. § 1325(a)(5), the plan cannot be confirmed.

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 Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services 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. 13-22312-E-13 AT-1 | **DEBRA MCCASTLE** | **David Foyil** | **CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY** | **7-14-15 [123]**

VILLA SAN JUAN OWNERS ASSOCIATION VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13

Trustee, and Office of the United States Trustee on July 14, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Court's decision is to grant the Motion for Relief From the Automatic Stay.

Villa San Juan Owners Association ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 101 Balcaro Way Unit 94, Sacramento, California (the "Property"). Movant has provided the Declaration of Racheal Leonard to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Leonard Declaration states that there are 28 post-petition defaults in the payments on the obligation secured by the Property, with a total of $7,964.12 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $125,655.07 (including $5,000.00 secured by Movant's assessment lien), as stated in the Leonard Declaration and Schedule D filed by Debra McCastle ("Debtor"). The value of the Property is determined to be $42,000.00, as stated in Schedules A and D filed by Debtor.

JULY 28, 2015 HEARING

At the hearing, the court continued the Motion to 1:30 p.m. on August 11, 2015 to permit time for the payment to be made in full. Dckt. 134.

DISCUSSION

No supplemental pleadings have been filed in connection with this Motion to date.

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

Since the commencement of this case, twenty-eight post-petition monthly assessment to the Movant have come due. Debtor has paid seventeen payments for this post-petition obligation, leaving eleven in default – while enjoying the post-petition on-going benefits provided by Movant. On June 10, 2015, the

court denied confirmation of a modified plan in this case. Dckt. 122. The pre-petition claim filed in this case by Movant is for $5,000.00. Proof of Claim No. 10. (This appears to be a "plug-in number in light of the detailed information on the attachment to the proof of claim.) Exhibit B to the Proof of Claim computes the arrearage to be as follows:

Assessments for Period 8/1/11 - 8/31/11.....$ 188.17
Assessments for Period 9/1/11 - 5/31/12.....$2,484.00
Assessments for Period 6/1/12 - 9/12/12.....$1,104.00

These fourteen assessments total $3,776.17. In addition, Movant asserts the right to recover an additional $878.50 in trustee fees and costs, $218.77 in interest, $150.00 in collection costs, and $248.40 in late charges. Movant computes the total amount on Proof of Claim No. 10 to be $3,271.84.

The Amended Chapter 13 Plan was confirmed in this case by order filed on September 17, 2013. Dckt. 90. The Amended Plan provides for the following amounts to be paid Movant on its pre-petition claim:

Months 1-4 .....$0.00

Months 5-24.....$704.00 ($35.20/month x 20 months)

Months 25-60.....$4,800 (120.00/month x 40 months)

These payments appear sufficient to address the pre-petition claim of Movant (whether the detailed amount computed in Exhibit B or the "plug-in" amount stated on the first page of Proof of Claim No. 10).

Though Movant's Motion appears to state that it has unilaterally vacated the court's confirmation order and has chosen to not only apply plan payments to the claim, but to also divert post-petition payments to the pre-petition arrearage (so as to create the illusion of additional post-petition arrearage), no legal basis has been show for ignoring the provisions of the confirmed plan and confirmation order in this case.

Even when properly applying the post-petition payments, Debtor has still defaulted in eleven post-petition payments due Movant. Movant does not identify what eleven post-petition payments are in default, but the court infers that they are the last eleven payments, which are $295.00 each (without taking into account late fees). That totals $3,245.00.

When Debtor sought confirmation of a Modified Plan in 2015, the Supplemental Schedules I and J provides for the monthly payment of $0.00 for Movant's post-petition HOA dues of $295.00 a month. Civil Minutes, Dckt. 120; Supplemental Schedule J, Dckt. 133 at 7.

The Confirmed Amended Chapter 13 Plan requires monthly plan payments increase to $1,485.00 beginning with month 5. Dckt. 71. The proposed modified plan (which was not confirmed) would have required that beginning with month 21 (as opposed to month 5 under the confirmed plan) the monthly plan payment would increase to $1,485.00. Dckt. 109, p. 6. From Supplemental Schedule J, it appears questionable whether such payment could be made in light of the expenses (or lack of expenses) stated on that Schedule.

Debtor's multiple post-petition defaults are cause to terminate the automatic stay to allow Movant to proceed against its collateral.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant requests that the court allow $850.00 in attorneys' fees relating to the present motion. The dollar amount is not an unreasonable amount for a motion for relief from the automatic stay.

The Motion does not state a contractual or statutory basis for attorneys' fees. Unless authorized by statute or contractual provision, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

The present Motion does not state with particularity the grounds upon which an attorneys' fee award may be made by the court. Fed. R. Bankr. P. 9013. While attorneys fees no longer must be pleaded as a "claim" in light the amendments to Federal Rule of Bankruptcy Procedure 7008(b), the court must still be presented with a legal (statutory or contractual) and factual basis for awarding the fees. This would necessitate another hearing, and presumably additional attorneys' fees to provide the information that should have been stated with particularity in the present Motion.

No contractual or statutory basis have been stated for the award of attorneys' fees, that portion of the requested relief 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 for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C.

§ 362(a) are immediately vacated to allow Villa San Juan Owners Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 101 Balcaro Way Unit 94, Sacramento, California.

No other or additional relief is granted.

8. 15-22116-E-13 JOHN/NATALIE DYER MOTION TO CONFIRM PLAN
DPR-1 David P. Ritzinger 6-22-15 [30]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2015. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

9. 11-48418-E-13 MATTHEW HOGUE MOTION TO MODIFY PLAN
CAH-1 C. Anthony Hughes 6-23-15 [91]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 23, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

10. 14-21319-E-13 DPC-2 MARK/SARAH ANN HANSEN Bonnie Baker OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS 7-6-15 [131]

Tentative Ruling: The Objection to Exemptions 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 and Debtor's Attorney on July 6, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Objection to Exemption 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 Objection to Exemptions is sustained.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Exemptions on July 6, 2015. Dckt. 131.

The Trustee states that the Debtor filed an amended Schedule C and claimed an exemption under California Code of Civil Procedure § 703.140(b)(11)(D) and (E) for "Altec personal injury law suit filed by debtor Mark Hansen in anticipation of cross complaint by defendant in the Lance Hansen personal injury case" and exempted 100% of an unknown" value listed on amended Schedule B.

The Trustee argues that the Debtor is not entitled to the exemption, namely because the law suits appear to involve personal injury and lost wages of Lance Hansen.

DEBTOR'S COUNSEL'S DECLARATION

On July 16, 2015, Bonnie Barker, the Debtor's counsel, filed a Declaration

in Opposition to the Trustee's Objection. Dckt. 145. Ms. Barker states that the Debtor reported a personal injury case filed by Debtor Mark Hansen against the same defendant, product manufacturer Altec, which was also the defendant in his son's product's liability case. Debtor Mark Hansen's case is based upon his witnessing of his son's accident.

Ms. Baker argues that the Trustee believed this was Lance Hansen's case and not the Debtor's. The case listed on Schedule B is Mark Hansen v. Altec Industries, Inc., Case No. 14-0180232 in Shasta County Superior Court.

DISCUSSION

In relevant part, California Code of Civil Procedure § 703.140(11)(D) and (E) state:

> (11) The debtor's right to receive, or property that is traceable to, any of the following:
>
> > (D) A payment, not to exceed twenty-four thousand sixty dollars ($24,060), on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent.
> >
> > (E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Based upon the response by Debtor's counsel, it appears that the Trustee may have misconstrued the personal injury claim listed on Schedule B as that for Debtor's son rather than a personal claim the Debtor has against the defendant.

However, does not address the substance of the Trustee's Objection. First, Debtor's counsel provides only her declaration saying that the damages relate to a claim based on the Debtor witnessing someone else (his son) suffering injury in an accident. No information is provided about this claim (asset of the bankruptcy estate).

Second, the Trustee has objected to the unlimited exemption claimed in this asset. The basis for the exemption is California Code of Civil Procedure § 703.140(b)(11)(D) and (E). Amended Schedule C, Dckt. 124. For the "personal injury" damages, the maximum amount which may be exempt is $24,060, not 100% of some unknown amount as sought by Debtor in Amended Schedule C.

There are few cases interpreting this statute and what constitutes "bodily injury." The bankruptcy court in *In re Ciotta*, 222 B.R. 626, 631 (Bankr. C.D. Cal. 1998) concluded that the person asserting the exemption must have suffered a physical injury, not mental injury or anguish (such as pain and suffering), upon which the damages are based. Debtor offers no basis for claiming the exemption.

As recently determined by the Hon. Christopher M. Klein in *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015), the burden of providing the basis for an exemption is that of the debtor, not the party objecting. The exemption claimed arises under California law and California places the burden of proof on the Debtor in this contested matter. *Id.* at *7-*11. The presumption for the exemption created by the filing of Schedule C is rebutted by the filing of the

objection to exemption, placing the burden on the debtor to prove the objection. *Id.* at *15, and *33-*36.

Additionally, no basis is apparent for a good faith claiming of all of the undisclosed amount of the asset being exempt in this case. Fed. R. Bank. P. 9011. While it could appear that this minimal disclosure and over-reaching exemption, when coupled with a minimalist response by counsel (who chooses to morph from an independent attorney to a percipient witness testifying for her client, and possibly waive the attorney-client privilege as to the subject of the testimony), the court will give the Debtor and counsel the benefit of the doubt. The court can imagine (and will not profess to "know the pain") of witnessing the injury of one's child. The Debtor and counsel need to focus on addressing the related family issues and effectively prosecute the claims (both Debtor's and son's), rather than being bogged down with issues of whether the Schedules have been completed truthfully, accurately, and in good faith – at least as to this immediate issue. The court expects, and the Debtor has the fiduciary duty, that the claim, the exempt and non-exempt portions, to be diligently prosecuted and the full value of Debtor's claim to be recovered for the estate as part of the good faith prosecution of this case by both Debtors.

The court sustains the Objection to Claim of Exemption, with leave for Debtor to file, on or before August 23, 2015, a further amended schedule c which accurate, truthfully, and correctly states the asset in which the exemption is claimed, the basis for the exemption, and the amount of the exemption.

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 Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Exemptions is sustained and the Debtor's exemption pursuant to California Code of Civil Procedure § 703.140b)(11)(D), (E) for "100%" claimed in the asset described as "Altec personal injury law suit filed by debtor Mark Hansen in anticipation of cross complaint by defendant in the Lance Hansen Personal Injury case" is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that leave is granted Debtors Mark Jon Hansen and Sarah Ann Monica Hansen, and each of them, to file on or before August 23, 2015, a further amended Schedule C to state what exemption, if any, is to be claim in the above described asset in this bankruptcy case by Debtor.

11. 15-25720-E-13 SJS-1 — STEPHANIE BRECKENRIDGE — Scott J. Sagaria — MOTION TO VALUE COLLATERAL OF CAPITAL ONE, N.A. — 7-22-15 [10]

Tentative Ruling: The Motion to Value secured claim 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 22, 2015. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim 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 Capital One, N.A. ("Creditor") is granted and the secured claim is determined to have a value of $11,481.00.

The Motion filed by Stephanie K. Breckenridge ("Debtor") to value the secured claim of Capital One, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Lexus ES 350 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,481.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in or about January 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,663.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $11,481.00. *See* 11 U.S.C. § 506(a). The valuation motion

pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Stephanie K. Breckenridge ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2008 Lexus ES 350 ("Vehicle") is determined to be a secured claim in the amount of $11,481.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,481.00 and is encumbered by liens securing claims which exceed the value of the asset.

12. 15-25621-E-13 SDH-1 MIRACLE WANZO Scott D. Hughes MOTION TO EXTEND AUTOMATIC STAY 7-15-15 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Michelle Miracle ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-28488) was dismissed on June 24, 2015, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 14-28488, Dckt. 39, June 29, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the

subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as Debtor was unable to keep up the plan payments since Debtor is self-employed and was unable to bill her contract job in time for the plan payments. The Debtor states that she has now "caught up" and will be ahead by more than one payment and will have a better ability to keep up with the monthly payment. The Debtor states that she chose to file a new case rather than modify the prior plan. The Debtor filed the instant case to save her home.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

13. 15-24024-E-13 TAMI ERTLE
DPC-1

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-15-15 [23]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

Local Rule 9014-1(f)(2) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 15, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

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

1. The Trustee is not certain if the plan complies with applicable law or if the plan pays the claims as proposed. Debtor lists Caliber Home Loans in Class 1 of the plan and reports a $34,000.00 in mortgage arrearage owed to the claimant. Debtor fails to propose a monthly dividend to be paid to the ongoing mortgage through the plan. Debtor lists on Schedule J an expense for rent/mortgage $250.00, this appears to be payment on the Second deed listed in Class 4 of the plan. It appears the Debtor has failed to propose for ongoing monthly payments toward their first mortgage. Failing to propose for ongoing mortgage payments in Class 1 conflicts with the terms in Class 1 of the plan.

2. The Debtor's plan proposes to pay $5,000.00 in attorney fees. Schedule I shows that the Debtor has no business income. Debtor's plan and the Rights and Responsibilities indicate $5,000.00 in attorney fees have been charged in this case. Only $4,000.00 for the "no-look" set fee is allowed in a non-business case under Local Bankr. R. 2016(a)(c)(1). Debtor reports on Statement of Financial Affairs that she has paid counsel $2,500.00 toward attorney fees and $500.00 in costs. Debtor fails to indicate what these costs are. Counsel for Debtor has overcharged for a non-business Chapter 13 case.

3. Section 2.07 of the plan fails to provide a monthly dividend to be paid to administrative expenses such as attorney fees. In section 2.06, Debtor reports a balance of $2,500.00 is owed on attorney

fees. The Trustee is unable to determine what the monthly dividend should be.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on July 27, 2015. Dckt. 29. The Debtor filed a Motion to Amend Plan and an amended plan on July 28, 2015. Dckt. 43 and 45.

DISCUSSION

In light of the Debtor filing an amended plan and a Motion to Confirm the Amended Plan set for hearing on September 22, 2015, the court construes such filing as a de facto withdrawal of the original plan. As such, the objection is sustained and the Plan filed on May 27, 2015 is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan filed on May 27, 2015 is not confirmed.

14. 11-23426-E-13 STEPHEN/JANET TOLLNER CONTINUED MOTION TO MODIFY PLAN
TJW-1 Timothy J. Walsh 3-21-15 [71]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2015. By the court's calculation, 59 days' notice was provided. 35 days' notice is required.

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

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

Stephen and Janet Tollner ("Debtors") filed the instant Motion to Confirm the Modified Plan on March 21, 2015. Dckt. 71.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 29, 2015. Dckt. 77. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the Debtors' ability to pay. The Debtors have not filed supplemental Schedules I or J in support of the proposed plan. This case was filed February 2011, now more than four years ago.

2. The Debtors scheduled Chase Home Finance in Class 3 of the confirmed plan and proposed modified plan the surrender of property at 443 Rolling Oak Drive, Vacaville, California. However the Debtors have not reported a change of address. Additionally, Deutsche Bank National Trust filed Proof of Claim No. 17 listing this property. Chase Home Finance was amending Proof of Claim No. 22 in light of a loan modification. However, the court has not authorized any loan modification and it appears that the Debtors still reside at the property.

3. The proposed monthly dividend for the Class 2 creditor is not sufficient. The Debtor is adding the secured part of Internal Revenue Service's claim as a Class 2 Claim. Proof of Claim 29. The claim is for $11,211.99 with 4% interest. The proposed monthly dividend is $210.00 per month. Only ten months remains in the Debtors' plan so the monthly payment is insufficient to pay the plan in full.

MAY 19, 2015 HEARING

At the hearing, the Trustee and Debtor agreed to supplemental pleadings to address the Trustee's opposition and confirm the proper computation of the Internal Revenue Service claims. The court continued the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on July 21, 2015. Dckt. 82. The court ordered that the Trustee shall file Supplemental Opposition on or before May 27, 2015; Debtor shall file and serve Supplemental Pleadings on or before June 24, 2013, and Replies, if any, shall be filed and served on or before July 1, 2015.

JULY 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 11, 2015. However, in the civil minutes, the court noted the following:

> On July 9, 2015, the Debtor and Chapter 13 Trustee filed a Motion requesting the court continue the hearing. Dckt. 85. Two grounds are stated for the continuance:
>
> A. Debtor's counsel is unavailable to attend the July 21, 2015 hearing; and
>
> B. The continuance will allow Debtor's counsel to provide supplemental pleadings regarding the Debtor's finances.
>
> No reason is given why counsel for Debtor was unavailable to attend the July 21, 2015 hearing. This Motion was originally filed on March 21, 2015. At the May 19, 2015 hearing the court continued it to the July 21, 2015 hearing date. In continuing the hearing, Debtor was responsible for filing supplemental pleadings on or before June 24, 2015. Nothing was filed in that thirty-six day period, nor has been filed to date. No reason was given for failed to timely file supplemental pleadings and no request was made for additional time.
>
> It may be that good reason exists for continuing the

hearing and good reason exists for Debtor failing to timely file the supplemental pleadings. But no such reason has been provided to the court.

When earlier presented with a proposed order to continue the hearing, the court granted the motion and continued the hearing based on the "unavailability of counsel." It was not made clear to the court that Debtor had failed to file the supplemental pleadings as earlier required. The court did not carefully review the court's file to determine when the representations in the Stipulation were complete. It appears that the court's general rule requiring a motion (ex parte or noticed) for the issuance of an order should have been followed, rather than the court relying upon what was merely stated in the stipulation.

UNTIMELY SUPPLEMENTAL PLEADINGS

On July 29, 2015, Stephen Tollner Jr., the son of the Debtor, filed a Declaration. Dckt. 88. The Declaration states that he currently lives with the Debtor and owns his own business. He states that he contributes $1,700.00 to the Debtor towards expense and will continue to continue the contribution through the remaining life of the plan, and beyond as long as he lives with the Debtor, which Mr. Tollner anticipates to be at least a year.

Another pleading, titled Exhibits, was filed. Dckt. 89. Four exhibits are attached. Additionally, the documents purports to “mash-up” a declaration by debtor’s attesting to (1) the authenticity of the documents and (2) the accuracy of the financial information stated therein. This document ignores Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents which requires that motions, objections, points and authorities, each declarations, and the exhibits document be filed as separate pleadings.

No request is made for filing untimely supplemental pleadings.

TRUSTEE’S RESPONSE

The Trustee filed a response on July 31, 2015. Dckt. 91. The Trustee responds as follows:

1. The Debtor filed a Supplemental Schedules I and J which adds the support from the Debtor’s son. The Trustee states that the Debtor is current under the proposed plan. However, the Trustee states that the Debtor has not addressed the Trustee’s concerns over the treatment of the Class 3 creditors. Namely, the Trustee states that it appears that the Debtor still remains at the Property listed in Class 3 and that Proof of Claim 37-1 indicates that the Debtor has obtained a loan modification. However, the Trustee states that he cannot locate approval of a loan modification. The second deed of trust on the property is still listed as a Class 3 creditor.

2. The proposed monthly dividend for the Class 2 creditor is not sufficient. The Debtor is adding the secured part of the claim of the Internal Revenue Service as a Class 2 claim in the amount of $11,211.99 with 4% interest. The proposed monthly dividend is $210.00 per month. Only ten months remain in the plan, so the Trustee asserts that this dividend amount is insufficient to pay the claim in full. The Trustee states that he has a balance on hand of $12,678.92. The full Internal Revenue Service claim, with interest, is approximately be $13,268.00. The Trustee states that he would have no objection if the order modifying the plan directed all available funds be paid to the Internal Revenue Service until the claim is paid in full.

DEBTOR'S REPLY

The Debtor filed a reply on August 4, 2015. Dckt. 93. The Debtor states that they have no objection to adding the additional language concerning the Internal Revenue Service claim that all available funds be paid to the Internal Revenue Service until the claim is paid in full.

As to the Trustee's concerns over Class 3 creditors, the Debtor states that the Debtor and mortgage company, in lieu of foreclosure, adjusted the loan to allow the Debtor to remain in the home with a mortgage payment that the Debtor could maintain. The Debtor argues that the Trustee and the court have "no interest nor legitimate concern over the activity of the mortgage and the Debtor regarding this debt, after the relief has been granted."

DISCUSSION

The Trustee's remaining objections are well-taken. First, the supplemental declaration of the Debtor's son and the supplemental Schedules I and J address the concerns of the Debtor's ability to make the plan payments as proposed and therefore, the Trustee's objection as to ability to make plan payments is overruled.

However, as to the Trustee's objection concerning Class 3 treatment and the alleged loan modification, the court has the same concerns. The Debtor's response that "the court need not worry about it" is not a sufficient response.

The Debtor is apparently attempting to classify the mortgage creditor as a Class 3 creditor, "surrendering" the collateral, but using that as a cloak to modify the loan without Trustee and creditor participation and court authorization.

The Debtor's reply essentially states that the Debtor does not need court approval for the loan modification, which may or may not be in the best interest of the estate, Debtor, or other creditors and which may prejudice, unfairly, other creditors. This is facially incorrect. The Debtor's proposed plan is facially, based on the Debtor's reply, not an accurate representation of the Debtor's financial reality nor does it seem to take into consideration that this quasi-Class 3 treatment the Debtor is creating proper under the Bankruptcy Code. The failure to get court approval for the loan modification and not properly classifying the Class 3 creditors are grounds to deny confirmation.

The Debtors misstate the relief granted by confirmation of the Plan for Class 3 treatment of a claim. The Automatic Stay is modified to allow the creditor to exercise its rights in the collateral. The property is not "abandoned" and the Debtor are not freed from the Bankruptcy Code in how they want to deal with the property. Rather than paraphrasing, the court directs the Debtor and counsel to the exact language in Debtor's confirmed Chapter 13 Plan:

> "2.10. Class 3 includes all secured claims satisfied by the surrender of collateral. Upon confirmation of the plan, all **bankruptcy stays are modified** to **allow a Class 3 secured claim holder** to **exercise its rights against its collateral**."

First Modified Plan ¶ 2.10, Dckt. 70 [emphasis added]. No relief from the Bankruptcy Code is granted Debtor, nor is the property removed from the exclusive jurisdiction of this court. 28 U.S.C. § 1334(e).

Debtor's contention that "The trustee and the Court have no interest nor legitimate concern over the activity of the mortgage and the debtor regarding this debt, after the relief has been granted" demonstrates not merely a lack of good faith, but bad faith in the prosecution of this case. The Debtor's contention that because Debtor purports to grant relief from the stay Debtor's financial dealings are beyond the consideration of the Trustee, creditors, and the court is baseless, without merit, and in bad faith.

This secret plan modification demonstrates that Debtor's testimony as to finances under penalty of perjury is false. In the original declaration in support of confirmation, Debtor failed to provide any current financial information. Debtor could have proceeded truthfully, honestly, and accurately in the prosecution of this case and plan. Like thousands of debtors before them they could have sought approval of a loan modification. They could have sought to modify the plan, disclosing that they were receiving a contribution from their son. But Debtor did not, showing disdain for the law and the minium obligations of a debtor.

While the court may have agreed that the treatment of the Internal Revenue Service claim could be addressed in the order confirming, the failure to get approval for the loan modification, the failure to properly classify the secured claim of the creditor who continues to be paid in this Chapter 13 case, and the disregard for Debtor's obligation under the Bankruptcy Code renders this Plan unconfirmable.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 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.

15. 15-23332-E-13 KATHERINE GERRARD
BHT-1 David S. Silber
OBJECTION TO CONFIRMATION OF PLAN BY PROVIDENT FUNDING ASSOCIATES, LP
7-10-15 [41]

CASE DISMISSED: 07/26/2015

Final Ruling: No appearance at the August 11, 2015 hearing is required.

The case having previously been dismissed on July 26, 2015 (Dckt. 60), the Objection is overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot, the case having been dismissed.

16. 15-25732-E-13 MRL-1 — PAUL/JULIANNE CLEM — Mikalah R. Liviakis — MOTION TO VALUE COLLATERAL OF CITIBANK, N.A. — 7-27-15 [13]

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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 27, 2015. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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 Citibank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Paul J. Clem and Julianne M. Clem ("Debtors") to value the secured claim of Citibank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4433 Country Run Way, Antelope, California ("Property"). Debtor seeks to value the Property at a fair market value of $220,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $253,682.00. Creditor's second deed of trust secures a claim with a balance of approximately $57,079.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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 Paul J. Clem and Julianne M. Clem ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 4433 Country Run Way, Antelope, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $220,000.00 and is encumbered by senior liens securing claims in the amount of $253,682.00, which exceed the value of the Property which is subject to Creditor's lien.

17. 13-21833-E-13 NADA DAGHER
DPC-1 Mark A. Wolff

OBJECTION TO CLAIM OF NISSAN MOTOR ACCEPTANCE CORPORATION, CLAIM NUMBER 6
6-23-15 [70]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Creditor, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.

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

The Objection to Proof of Claim Number 6-1 of Nissan Motor Acceptance Corporation 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 Nissan Motor Acceptance Corporation ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $4,548.19. Objector asserts that the Creditor filed an amended Proof of Claim on June 12, 2015, more than one year after the modified plan was confirmed calling for the surrender of the Creditor's collateral, and 2 days after the Trustee filed its notice of Plan Completion. The Creditor's original Proof of Claim listed $4,122.06. The original confirmed plan provided for payments of this amount. The Debtor filed a modified plan, which was confirmed on June 5, 2014 which provided for the surrender of the Creditor's collateral. Dckt. 52.

On June 10, 2015, the Trustee filed the Notice to Debtor of Completed Plan Payments and of Obligation to File Documents.

On June 12, 2015, the Creditor filed Amended Proof of Claim No. 6-1. This was filed more than one year after the modified plan was confirmed calling for the surrender of the Creditor's collateral and two days after the Trustee filed its Notice of Plan Completion.

The Trustee argues that there are no funds on hand to distribute to the amended claim, the last disbursements having been made on May 29, 2015. The Amended Claim here was filed 2 days after the Trustee filed its Notice of Completion, 14 days after the final disbursements in this case were made, and more than one year after the modified plan calling for the surrender of the Creditor's collateral was confirmed.

The Trustee asserts argues if the claim was allowed, it would require the Trustee to request funds paid in the final disbursement to be returned. This would cause a burden to the Trustee and would cause prejudice to the other creditors who filed claims in a timely manner.

DEBTOR'S NON-OPPOSITION

The Debtor filed a non-opposition to the Trustee's objection on July 2, 2015. Dckt. 75.

DISCUSSION

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).

When a creditor amends a Proof of Claim and whether such an amendment should be allowed, the Ninth Circuit has stated:

> Whether to allow an amendment to a claim is within the discretion of the bankruptcy judge. *See, e.g., In re Black & Geddes, Inc.*, 58 B.R. 547, 553 (S.D.N.Y.1983) (in determining whether it would be equitable to allow a post-bar date amendment to a proof of claim, particularly significant are considerations of whether other claimants might be prejudiced by the amendment, and whether there is some justification for movant's failure to file a proper claim within the limitations period). In *In re City of Capitals, Inc.*, 55 B.R. 634, 637 (Bankr.D.Md.1985) the court stated that even if an amendment to a claim arises out of the same transaction or note giving rise to the original claim, "equitable considerations must govern the final analysis and ... 'the crucial question is whether the opposing party would be unduly prejudiced by the amendment.'" (quoting *In re Futuronics Corp.*, 23 B.R. 281, 283 (S.D.N.Y.1982)). The court further stated that in determining prejudicial effect it would look to such elements as bad faith or unreasonable delay in filing the amendment, impact on other claimants, reliance by the debtor or other creditors, and change of the debtor's position. *City of Capitals*, 55 B.R. at 634. *See also In re Overly-Hautz Co.*, 57 B.R. 932 (Bankr.N.D.Ohio 1986) (balancing of equities is required to determine propriety of amendment).

In re Wilson, 96 B.R. 257, 262 (B.A.P. 9th Cir. 1988).

A review of the docket shows that the deadline for filing a proof of claim for creditors was June 12, 2013. Dckt. 12. The Creditor filed its Proof of Claim 6-1 on June 12, 2015. This is exactly two years after the bar date for filing claims. While the Creditor can amend their claim, the fact that this amendment took place far after the bar date to file a claim, in addition to the fact that it took place more than one year after the modified plan was confirmed which called for the surrender of the collateral and 2 days after the Trustee filed its notice of Plan Completion, it appears that there would be prejudice to not only the Trustee but also to the other creditors of the Debtor. Allowing such an amendment, after the Trustee issued his Notice of Plan Completion would require creditors to turn funds back over to the Trustee to then re-calculate proper disbursement. This delay in filing the amended claim is facially unreasonable given the time frame of this case.

Based on the evidence before the court, the court finds that the delay in filing the amendment to Creditor's Proof of Claim No. 6-1 is prejudicial to the Debtor, creditors, and the estate and that the late filing was an unreasonable delay. Based on the factors of *In re Wilson*, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Nissan Motor Acceptance Corporation, Creditor filed in this case by 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 6-1 of Nissan Motor Acceptance Corporation is sustained and the claim is disallowed in its entirety.

18. 15-23946-E-13 DPC-1 — ANA RODRIGUEZ — Peter G. Macaluso — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK — 7-1-15 [24]

The Trustee filed a "Notice of Withdrawal" on August 5, 2015. Dckt. 30, stating that the Objection to Confirmation was withdrawn. The court construes this "Notice" as an election to dismiss the Objection to Confirmation without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Objection having been dismissed without prejudice, the matter is removed from the calendar.**

19. 15-22747-E-13 GARY/VICTORIA TEDFORD MOTION TO CONFIRM PLAN
PLC-2 Peter L. Cianchetta 6-16-15 [22]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on June 16, 2015 by e-mail. By the court's calculation, 56 days' notice was provided. 42 days' notice is required. However, the Proof of Service states that recipients were also mailed a hard copy but the Debtor failed to provide a mailing matrix.

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

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

Gary and Victoria Tedford ("Debtor") filed the instant Motion to Confirm the Amended Plan on June 16, 2015. Dckt. 22.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 27, 2015. Dckt. 33. The Trustee objects on the following grounds:

1. The Debtor's plan relies on a Motion to Value Collateral of Schools Financial Credit Union, but has not filed one.

2. The Debtor proposes to pay Schools Financial Credit Union in Class 2 reporting the value of the property to be $6,079.00. The monthly payment to Schools Financial Credit Union in Class

2 is $619.06. It appears the Debtor is attempting to accelerate payments to this creditor where the monthly dividend over 60 months would be $101.32. The acceleration of the secured claim causes a delay in payments toward unsecured claims.

3. Debtor failed to complete their Statement of Financial Affairs Questions Numbers 1, 2, 3, 4, and 7. Debtor reports working for the past several years on Schedule I. At the Meeting of Creditors, the Debtor admitted that they received $1,875.00 in rental income from their timeshare in 2014. This income is not reported on No. 2 on the Statement of Financial Affairs. Debtor reports no payments in the 90 days prior to filing on Statement of Financial Affairs and fails to report the mortgage lawsuit. Debtor reports paying $745.00 per month in tithing but report no gifts on the Statement of Financial Affairs.

4. The Debtor's plan may fail the Chapter 7 liquidation analysis. At the Meeting of Creditors, Debtor indicated that they have a pending lawsuit against their mortgage lender. This appears to be an asset not disclosed on Schedules B and C.

DISCUSSION

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

Failure to Provide Full Matrix of Parties Served

The Debtor's Proof of Service states that parties were mailed copies of the necessary pleadings on June 16, 2015. However, the Debtor failed to provide a copy of the mailing matrix, making it impossible for the court to determine if all necessary parties were served. Therefore, the Motion is denied without prejudice on this procedural ground.

Failures to Comply with 11 U.S.C. §§ 1322, 1323, and 1325

The Trustee's objections are well-taken. First, a review of the Debtors' plan shows that it relies on the court valuing the secured claim of Schools Financial Credit Union. However, the Debtors have failed to file a Motion to Value the Collateral of Schools Financial Credit Union. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's first objection is sustained.

The Trustee's second objection is also sustained. The plan provides for what appears to be an accelerated pay off of the arrears for "residential Credit Slt" but does not provide for any justification or explanation of why such treatment is proper. As noted by the Trustee, the accelerated pay off of the arrears, rather than the standard pay off through the life of the plan, will cause a delay in the unsecured creditors receiving their dividend. Without legal justification that would allow such preferential treatment for the creditor (and the Debtor in enhancing the value of the property Debtor seeks to retain), the unfair delay to the unsecured claimants makes the plan not feasible or viable.

The Trustee's remaining objections all concern the Debtors failing to

accurately, completely, and honestly providing necessary information. The Debtor failed to report a pending lawsuit against their mortgage lenders and failed to complete all income and payment information on Statement of Financial Affairs. Taken collectively, the court finds that the Debtors are not accurately and truthfully providing information as to their financial reality nor are the Debtors fulfilling their duties as fiduciaries. Without the Debtors properly filling out the schedules and reporting all assets and expenses, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325. These failures appear to be more than mere scrivener's errors and may be, in fact, an attempt by the Debtors to not fully disclose their finances. These then feed into the possibility that the Debtor, with the pending lawsuit, may not pass the liquidation analysis. Therefore, the Trustee's objections are sustained.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

20. 15-24150-E-13 DPC-1 TAEVONA MONTGOMERY Seth L. Hanson CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-1-15 [14]

Tentative Ruling: The Objection to Confirmation 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 Objection, 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 Objection. 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) Objection.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney on July 1, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to file a Motion to Value collateral of Real Time Resolutions and, therefore, cannot comply with the plan pursuant to 11 U.S.C. § 1325(a)(6).

JULY 28, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 11, 2015 to be heard in conjunction with the Motion to Value Collateral.

DISCUSSION

The court has denied the Motion to Value, it having failed to name the creditor. As noted, Proof of Claim No. 4 which states under penalty of perjury:

1. Real Time Resolutions, Inc. executes and files the proof of claim as the "creditor's authorized agent." Proof of Claim No. 2, p. 2. This states that the "creditor" asserting the claim is someone other than Real Time Resolution, Inc.

2. The name of creditor box on page 1 of Proof of Claim No. 2 states that Real Time Resolution, Inc. is the "AGENT FOR THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS SUCCESSOR TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWHEQ REVOLVING HOME EQUITY LOAN TRUST. SERIES 2005-E."

It appears that the Proof Claim identifies Real Time Resolution, Inc. as merely the agent for the named creditor, with Real Time Resolution, Inc. not purporting to be the creditor.

The Debtor not prosecuting a Motion to Value the secured claim of the creditor, but only of an agent, the Motion was denied. The claim not being valued, this Plan cannot be confirmed. FN.1.

FN.1. Accurately identifying the party whose interest and rights are to be effected in the judicial proceeding is not only necessary for the issuance of an effective order, it is a mandatory requirement for a federal court to exercise the Article III Judicial Power. Art. III, Sec. 2, requiring an actual case or controversy between the real parties in interest. This requirement of naming the actual creditor, and not a proxy agent, is nothing new for either debtor or creditor attorneys.

The objection to confirmation is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and confirmation of the Plan is denied, without prejudice.

21. 15-24150-E-13 SLH-1 — TAEVONA MONTGOMERY — Seth L. Hanson — MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC. — 7-1-15 [18]

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

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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 1, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Real Time Resolutions, Inc. ("Creditor") is denied without prejudice.

The Motion to Value filed by Taevona N. Montgomery ("Debtor") to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 131 Cedar Rock Circle, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $171,353.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut.*

Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

OPPOSITION

Creditor has not filed an opposition.

PROOF OF CLAIM NO. 4

A Review of the claim registry for the instant case shows that the Creditor filed Proof of Claim No. 4 on June 30, 2015. The Proof of Claim lists the creditor as "Real Time Resolutions, Inc., as the agent for the Bank of New York Mellon...Trustee..." On its face, the Proof of Claim identifies the Bank of New York Mellon, Trustee, as the creditor, with Real Time Resolutions merely being the agent of the creditor, not the creditor.

Attached to the Proof of Claim is a Special and Limited Power of Attorney in Favor of Real Time Resolutions, Inc. dated October 7, 2008. In this document the now defunct Countrywide Home Loans, Inc. is identified as a loan servicer and Real Time Resolutions, Inc. as a special servicer. Countrywide Home Loans, Inc. granted a power of attorney to Real Time to take specified acts which Countrywide Home Loans, Inc. was authorized to take as a loan servicer for third-party creditors. There is nothing in the power of attorney which purports to make Real Time Resolutions, Inc. the "creditor," the direct agent for the creditor, or an authorized agent for service of process for the creditor.

Further, the proof of claim is signed by Real Time, stating under penalty of perjury, "I am the creditor's authorized agent." Proof of Claim No. 4, p. 2.

DISCUSSION

Debtor seeks to value the collateral of "Real Time Resolutions, Inc." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective.

To the contrary, Proof of Claim clearly identifies the creditor as Bank of New York Mellon, Trustee. Real Time clearly states and admits that it is merely the agent for the actual creditor.

The court does not have in front of it the real parties in interest who have an actual claim or controversy to be determined. U.S. Const. Art. III, Sec. 2. Real Time does not have a claim to be valued pursuant to 11 U.S.C. § 506(a). If the court were to grant such an order against a non-creditor, it could subject Debtor to years of paying under a plan, only to discover that Debtor sill owes the unnamed creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well - most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or no having the benefit of paying a reduced secured claim.

Therefore, the Motion is dismissed without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Taevona N. Montgomery ("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 to Value the Secured Claim (collateral) of Real Time Resolutions, Inc. is denied, without prejudice to the court determining the value of the secured claim of the actual creditor in this case.

22. 15-20352-E-13 CAH-3 | **GREGORY/CLARICE BRIDGES** | **C. Anthony Hughes** | **MOTION TO VALUE COLLATERAL OF BANK OF AMERICA SBM LASALLE BANK, N.A.** **7-8-15 [65]**

Tentative Ruling: 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). The Defaults of the non-responding parties are entered by the court.

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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 8, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bank of America SBM LaSalle Bank, N.A. as Trustee of SACO 2005 ("Creditor") is denied without prejudice.

The Motion to Value filed by Gregory P. Bridges and Clarice I. Bridges ("Debtors") to value the secured claim of Bank of America SBM LaSalle Bank, N.A. as Trustee of SACO 2005-WM2 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4880 Westlake Parkway Unit 2708, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $142,746.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

DISCUSSION

Debtor seeks to value the collateral of "Bank of America SBM LaSalle Bank, N.A. as Trustee of SACO 2005-WM2." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective.

Debtor has made no effort to provide the court with any evidence of who "Bank of America SBM LaSalle Bank, N.A. as Trustee of SACO 2005-WM2" could possibly be. As this court has discussed in other cases, the FDIC lists five different federally insured banks with the words "Bank of America" in their names. https://www3.fdic.gov/idasp/main.asp. None of them are "Bank of America SBM LaSalle Bank, N.A. as Trustee of SACO 2005-WM2." The California Secretary of State lists eight corporations and one limited liability company with the words "Bank of America" in their names. http://kepler.sos.ca.gov/. Neither the FDIC or the California Secretary of State identified any entity named "Bank of America SBM LaSalle Bank, N.A."

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Gregory P. Bridges and Clarice I. Bridges (“Debtors”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

23. 15-24752-E-13 JAMES EDWARDS MOTION TO CONFIRM PLAN
BLG-1 Pauldeep Bains 6-22-15 [13]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 12-34858-E-13 MELINA LEWIS MOTION TO MODIFY PLAN
BLG-1 Chad M. Johnson 6-23-15 [46]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2015. By the court's calculation, xx days' notice was provided. 35 days' notice is required.

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

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

Melina Lewis ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 23, 2015. Dckt. 46.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 28, 2015. Dckt. 53. The Trustee objects on the following grounds:

1. The plan is not the debtor's best effort. The Debtor is proposing to increase her plan payments from $150.00 per month to $263.00 beginning July 2014 due to an increase in disposable income. Debtor's supplemental Schedule I reflects monthly gross wages of $7,659.83, and deductions of $2,333.43 for tax, medicare, and social

security. The Trustee calculates Debtor's withholding net 7.5% for Medicare and Social Security to be $1,759.00 per month, rounded. The Trustee calculated estimated taxes for 2015 using the Debtor's filing status deduction and exemptions from the 2014 tax returns to rah an estimated total tax of $16,800.00. Debtor's estimated tax withholding is $21,108.00. The Trustee estimates the Debtor has over withheld taxes by $4,308. The Trustee requests the Debtor be required to pay all tax returns to the Trustee for the benefit of the creditors, or increase the plan payment by an additional $359.00 per month, for a total of $622.00.

2. Debtor may not have had permission to borrow funds from her retirement plan. Debtor's Declaration indicates Debtor made necessary repairs to her roof and refers to the exhibits which included the roofing repair contract and a 403(b) loan confirmation of activity in the amount of $9,000.00. The Debtor's Supplemental Schedule J now budgets $204.22 per month for 403(b) loan payments. The Trustee states that he cannot find a court order authorizing the borrowing nor why the Debtor would take out $9,000.00 when the repair estimate was $6,885.00. FN.1.

FN.1. In reviewing the Supplemental Schedule J on August 6, 2015, in preparation for the hearing, the court noted that one of the expenses is $475.00 for this one Debtor's telephone, cell phone, internet, satellite, and cable service. Exhibit C, p. 23; Dckt. 50. Coincidentally, the judge just happened to be paying his family' bill for (1) a land line, (2) high speed internet, (3) cable (not including any premium channels), and three cell phones (two of which have unlimited data packages). The total bill for all of the above was $437.29 (which is the full billed rate and not part of any reduced or new customer limited time package). While such outside of court experience is not evidence or determinative of the ruling, it is common knowledge that a cell phone, internet service, and basic cable and satellite services for one person do not cost $475.00 a month for the average consumer. When this general knowledge is coupled with an unauthorized loan of $9,000 for a roof repair for which the documentation shows a cost of $6,885.00, it raises the specter of bad faith and whether the Debtor is attempting to so improperly manipulate the bankruptcy system that prosecuting any bankruptcy case could be in good faith.

In reviewing Schedule J, though not listed as a dependant, Debtor also disburses from her income $250 a month as "Support to Daughter." *Id.* at 25.

Further undercutting the credibility of the Debtor is that she states under penalty of perjury in her declaration the following legal conclusions:

A. "Our [though there is only one debtor in this case] plan complies with applicable laws." Declaration ¶ 3.

B. "The Modified Plan complies with the provisions of this chapter and with other applicable provisions of title 11 of the United States Code." Declaration ¶ 3.a.

C. "The petition was filed in good faith." ¶ 3.c.

D. "[T]he plan provides to pay the creditors pursuant to section 1325(a)(5)(B)." Declaration ¶ 3.e.

Declaration, Dckt. 48. That a layperson would sign a declaration making such legal conclusions (though the Debtor may have view the good faith statement as a personal opinion) could well mean that the Debtor merely signed the document because, "it lets me with, without regard to what I'm testifying to therein."

Debtor obtained confirmation of the original plan in this case in 2012 based on the financial information provided in original Schedules I and J. Dckt. 1. No objection to confirmation was filed and no hearing was conducted before the court. On Schedule J, Debtor stated under penalty of perjury that her transportation expenses (gas (at 2012 prices), license, registration, and repairs) was only $100.00 a month. Debtor further stated under penalty of perjury that her cell phone expense was $187 and her phone/cable/internet expense was $199.14. Those expenses totaled $386, for one person.

On Schedule J Debtor states under penalty of perjury that she has a 24 year old son, who was listed as a "dependent." *Id.* at 32. However, in the additional expenses, Debtor states she is also disbursing $250 a month "Support to Daughter." *Id.* at 34.

Debtor's auto insurance was stated under penalty of perjury to be $150 a month in 2012. *Id.* at 33. This drops to $99 in the Supplemental Schedule J. Dckt. 50 at 23.

These changing numbers, without explanation raise serious issues not only with the credibility of any testimony provided by Debtor, but whether this case was filed and is being prosecuted in good faith.

DISCUSSION

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

The Trustee's objections are well-taken. It appears that both the objections tie into the fact that the proposed plan may not be the Debtor's best efforts, especially in light of the Debtor potentially withdrawing unauthorized funds from her retirement account without court permission. A review of the Supplemental Schedules I and J show that not only is there the appearance of over-withholding, the Debtor is making payments to 403(b) loan repayments on a loan that the Debtor never sought court permission to incur. Based on the Trustee's calculation, it appears that there may be substantial additional disposable income that should either be added into the plan payments through reducing the Debtor's withholdings or should be committed to the plan through the Debtor committing her tax returns to the plan payments when received. Instead, to the court, it appears that the Debtor may be partaking in some creative deductions in her pay in order to give the appearance of less disposable income in hopes of using the tax refund outside the plan.

This conclusion is only further emphasized by the Debtor without authorization taking out a loan from her retirement account, in an amount far in excess of any repairs necessary for repairs, to only then have her Schedule J reflect the repayment of such at the expense of the estate and creditors. This plan is not the Debtor's best efforts as required by 11 U.S.C. § 1325(b).

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and

1329 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.

25. 10-45765-E-13 GREGORY/LYNN MURDOCK MOTION TO MODIFY PLAN
JLK-4 James L. Keenan 6-19-15 [80]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2015. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

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

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

Gregory and Lynn Murdock ("Debtor") filed the instant Motion to Confirm the Modified Plan on June 19, 2015. Dckt. 80.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 28, 2015. Dckt. 91. The Trustee objects on the following grounds:

1. Debtor's proposed plan does not authorize interest payments made to Class 2 Creditors. The additional provisions authorize principal payments of $17,001.75 to Santander Consumer, $40,533.26 to Ally Financial, and $710.68 to Devons Jewelers, but does not authorize interest payments of $2,263.21 to Santander, $5,521.62 to Ally Financial, and $19.96 to Devons Jewelers.

2. Debtor proposes to reduce their plan payment from $2,800.00 to $1,250.00 but have not filed supplemental Schedules I and J in support of the reduction. The Debtor states that they fell behind on payments due to joint-debtor's recent unemployment. However, no supplemental schedules have been filed.

3. Debtor's modified plan proposes to decrease the minimum percentage to unsecured creditors from 12% to 8% where the plan estimates the total unsecured at $222,819.77 and thus the dividend would be $17,825.59. To date, the Trustee has disbursed $66,249.44 to unsecured. The Trustee does not oppose the modified plan percentage as a minimum, provided the Debtor is not attempting to limit prior disbursements.

4. Section 2.06 of Debtor's proposed plan states attorney's fees are $1,500.00 paid prior to filing the case, with $2,500.00 to be paid through the plan. Under the confirmed plan, $1,500.00 was paid directly by the Debtor prior to filing the case and $2,000.00 was to be paid through the plan. To date, the Trustee has disbursed $2,000.00. No motion for additional fees has been filed.

DISCUSSION

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

The Trustee's objections are well-taken. While the majority of Trustee's objections may be able to be dealt with in the order confirming, the Debtor has not filed a response to the Trustee's objections and, therefore, the court is uncertain what the intentions of the Debtor are and whether they are, in fact, permissible.

A review of the plan shows that the Debtor has not authorized the interest payments to the creditors listed supra, the plan attempts to reduce the minimum percentage dividend to unsecured creditors when there has already been monies disbursed in excess of that minimum percentage, and the Debtor's counsel appears to be seeking additional fees without obtaining approval of such fees. While the court can conceive that these were all just mere scrivener's errors and that the Debtor and Debtor's counsel meant to authorize the interest payments, the prior unsecured divided payments, and correctly state the attorney's fees, the combination of these makes the court question whether this modified plan, in fact, does provide for the financial reality of the Debtor and whether the plan is actually feasible when all the corrections are made.

While the Debtor has filed supplemental Schedules I and J which reflect that the Debtor can only afford the $1,250.00 plan payments, Debtor does not provide any testimony about the unemployment of one of the debtor's, what unemployment benefits, if any, are anticipated or received, and the projected duration of the unemployment.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 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.

26. 13-25668-E-13 MMM-2 | **MARK/SHAWNA SMITH** | **Mohammad M. Mokarram** | **MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON** | **7-27-15 [29]**

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 27, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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 The Bank of New York Mellon ("Creditor") is continued to 3:00 p.m. on September 1, 2015.

The Motion to Value filed by Mark and Shawna Smith ("Debtor") to value the secured claim of The Bank of New York Mellon ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1557 Sweetgrass Lane, Lincoln, California ("Property"). Debtor seeks to value th e Property at a fair market value of $210,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not

the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "The Bank of New York Mellon." However, Proof of Claim No. 3, relied upon by Debtor for the present Motion, lists the Creditor as: "The Bank of New York Mellon FKA The Bank of New York, as successor trustee to JP Morgan Chase Bank, N.A., as trustee on behalf of the certificateholders of the CWHEQ, Inc., CWEHQ Revolving Home Equity Loan Trust, Series 2005-1." Proof of Claim, No. 3.

A person in its capacity as a trustee of a trust is a separate legal entity from that person individually. Here, the Motion appears to request that the court issue an order valuing a claim of Bank of New York personally, and not in its trustee capacity of any trust. That would render Debtor with a potentially ineffective order, and possibly much heartache after performing the plan for five years, only to discover that the claim of the trustee, in its fiduciary capacity for the trust, has never been valued. FN.1.

FN.1. The court notes that Proof of Claim No. 3 clearly identifies the creditor as Bank of New York Mellon, Trustee [specially identifying the trust]." Nothing more can be asked of a creditor, its attorneys, or loan servicer in clearly identifying the creditor for a debtor and debtor's counsel.

The court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors.

Rather than denying the Motion, the court continues the hearing to allow

the Debtor the opportunity to address whether the real party in interest has been listed and whether relief has been requested against a creditor who has a claim in this case. Therefore, the hearing is continued to 3:00 p.m. on September 1, 2015. The Debtor shall file and serve supplemental papers on or before August 25, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Mark and Shawna Smith ("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 continued to 3:00 p.m. on September 1, 2015. The Debtor shall file and serve supplemental papers on or before August 25, 2015.

27. 14-29670-E-13 CHERRONE PETERSON MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso 6-18-15 [121]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2015. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

Cherrone Peterson ("Debtor") filed the instant Motion to Confirm the Amended Plan on June 18, 2015. Dckt. 121.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 27, 2015. Dckt. 143. The Trustee objects on the following grounds:

1. The Debtor is $360.00 delinquent in plan payments under the proposed plan.

2. Debtor's plan and debtor's Motion conflict as to the percentage to be paid to unsecured creditors. Section 2.15 of the plan lists the percentage to unsecured creditors as 62%. Debtor's Motion states the plan pays 0% to unsecured creditors. The plan is not feasible at 62% and will take 84 months. If the Debtor's

intent is to propose 0%, the Trustee does not oppose a provision in the order confirming to clarify.

DISCUSSION

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

The Trustee's objections are well-taken. The basis for the Trustee's first objection is that the Debtor is $360.00 delinquent in plan payments. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the 25 day of each month beginning the month after the order for relief under Chapter 13. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, while this would normally be able to be corrected in the order confirming, the fact that the Debtor is delinquent in the plan payments is an independent ground to deny confirmation.

The Debtor has not filed any responsive pleadings or evidence showing that the delinquency has been cured.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

28. 15-24476-E-13 DPC-1 KENNETH/STACEY ACKMAN Thomas L. Amberg OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-9-15 [36]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 9, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on August 18, 2015, to be heard in conjunction with the Motion to Value Collateral of Real Time Resolutions, Inc.

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

1. The Debtor's plan relies on the Motion to Value Collateral of Real Time Resolutions, Inc.

2. The plan may not be proposed in good faith and may be causing unfair discrimination to the unsecured creditors. The Debtor is an above the median income and propose plan payments of $693.00 per month for 60 months, paying no less than 7% dividend to unsecured creditors. The Debtor's Schedule J states that the Debtor is paying an ongoing court ordered restitution in the amount of $1,400.00 per month. Debtor fails to disclose this treatment to creditors in their plan as either a Class 3, 4, or 5 or general unsecured to be paid directly by Debtor in the additional provisions. Additionally, the Trustee states he is unsure if the Debtor is entitled to relief under 11 U.S.C. § 109 because the Debtor failed to list the amount of claim owed to the Sacramento Department of Revenue Recovery, Community Bank/Lane Bryant, GECRB/Sams Club, and States Recovery System.

DEBTOR'S REPLY

The Debtor filed a reply on July 28, 2015. The Debtor states that the Motion to Value was continued to August 18, 2015 to allow counsel to file supplemental documents relating to the real creditor in interest on or before August 11, 2015.

The Debtor further states that the Debtor did disclose the obligation of

the Sacramento Department of Revenue Recovery at a pre-Meeting of Creditors, at the Meeting of Creditors, and in other discussions. The obligation is disclosed in Debtor's Schedule C. The Debtor proposes to add a provision in the order confirming stating "The Debtors shall continue to make payments directly to the Sacramento County Department of Revenue Recovery in the amount ordered by said Agency. The Debtors shall notify the Trustee of any change in the amount of these payments."

The Debtor requests continuing the instant Objection to August 18, 2015 to be heard in conjunction with the Motion to Value.

DISCUSSION

In light of the Motion to Value Collateral being continued and the Trustee's objection being based, in part, on the Motion to Value, the court continues the instant Objection to 3:00 p.m. on August 18, 2015.

However, the Trustee and Debtor should carefully review Proof of Claim No. 2 which states under penalty of perjury:

1. Real Time Resolutions, Inc. executes and files the proof of claim as the "creditor's authorized agent." Proof of Claim No. 2, p. 2. This states that the "creditor" asserting the claim is someone other than Real Time Resolution, Inc.

2. The name of creditor box on page 1 of Proof of Claim No. 2 states that Real Time Resolution, Inc. is the "AGENT FOR THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS SUCCESSOR TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWHEQ REVOLVING HOME EQUITY LOAN TRUST. SERIES 2006-G." FN.1.

FN.1. Interestingly, on the Mortgage Proof of Claim Attachment to Proof of Claim No. 2, Real Time Resolutions, Inc. failed to state the name of the creditor on this form. Proof of Claim No. 2, p. 6. This may have been inadvertent or be part of a continuing failure to truthfully and accurate compete this form. The court leaves, at this point in time, for the Chapter 13 Trustee and U.S. Trustee to review the multitude of cases they have before them to determine if there is an issue which should properly presented to at this point concerning the truthful, honest, and accurate identification of the creditor in proofs of claims.

It appears that the Proof Claim identifies Real Time Resolution, Inc. as merely the agent for the named creditor, with Real Time Resolution, Inc. not purporting to be the creditor.

The Motion to Value, TLA-3 (Dckt. 24), clearly states that the claim to be valued is that of Real Time Resolution, Inc. While this pleading may have been served on both Real Time Resolution, Inc. and Bank of New York Mellon, Trustee, the only relief sought is against Real Time Resolutions, Inc. Just as a plaintiff could not contend that a party not named as a defendant, but had a copy of the complaint served on them, should have judgment entered against them, the court does not issue orders granting relief against persons not clearly named against whom relief is requested. While it may be argued that the creditor should have known that it was intended by the debtor that the

creditor's name was to have been placed in the motion and an order obtained against the creditor and not the agent, there is little reason for having the court engage in such suppositions and put at issue of whether Due Process has been satisfied, when it is so easy to correctly identify parties.

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 is continued to 3:00 p.m. on August 18, 2015, to be heard in conjunction with the Motion to Value Collateral of Real Time Resolutions, Inc. (DCN: TLA-3)

29. 15-24478-E-13 DPC-1 — ROBIN DOYLE, Peter G. Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 7-8-15 [15]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 8, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on a Motion to Value Collateral of Wells Fargo Bank, N.A.

DEBTOR'S RESPONSE

Robin Doyle ("Debtor") filed a reply on July 13, 2015. Dckt. 24. The Debtor states that a Motion to Value Collateral of Wells Fargo Bank, N.A. has

been filed at set to be heard at 3:00 p.m. on August 11, 2015.

DISCUSSION

At the August 11, 2015 hearing, the court granted the Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. Since the court granted the Motion, the Trustee's objection is overruled. Therefore, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 1, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. 15-24478-E-13 ROBIN DOYLE MOTION TO VALUE COLLATERAL OF
PGM-1 Peter G. Macaluso WELLS FARGO BANK, N.A.
7-8-15 [19]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 8, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Robin T. Doyle ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7751 Windbridge Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $215,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff

> under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $255,900.00. Creditor's second deed of trust secures a claim with a balance of approximately $65,009.86. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Robin T. Doyle ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property

commonly known as 7751 Windbridge Drive, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $215,000.00 and is encumbered by senior liens securing claims in the amount of $255,900.00, which exceed the value of the Property which is subject to Creditor's lien.

31. 15-24979-E-13 MET-2 | **LINDA VANPELT** | **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF SUNTRUST MORTGAGE, INC.** | **7-1-15 [18]**

Final Ruling: No appearance at the August 11, 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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 1, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of SunTrust Mortgage, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Linda Vanpelt ("Debtor") to value the secured claim of SunTrust Mortgage, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7824 English Hills Road, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $550,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed by SunTrust Bank (after the present motion was filed) is the claim which may be the subject of the present Motion. The attachments to the Proof of Claim list Creditor as the lender. FN.1.

FN.1. Though the Proof of Claim identifies SunTrust Bank as the creditor and there is an assignment of the deed of trust from SunTrust Mortgage, Inc. to Suntrust Bank, Inc., no assignment of the note is attached and the copy of the note attached to the proof of claim is not endorsed in blank.

The court makes no determination whether SunTrust Mortgage, Inc. or SunTrust Bank is the creditor whose claim must be valued in this case. The court leaves it to Debtor and Debtor's counsel to be satisfied that they have obtained a valid enforceable order in light of the conflicting evidence before the court.

The Motion requests relief only as to any claim of SunTrust Mortgage, Inc. Motion, Dckt. 18. The Motion was served only on SunTrust Mortgage, Inc.

The court also leaves it to the Chapter 13 Trustee and the U.S. Trustee, at this point in time, to consider whether the proof of claim as filed is incomplete, deceptive, or inaccurate as to the identity of the creditor for that claim.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $837,574.00. Creditor's second deed of trust secures a claim with a balance of approximately $160,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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 Linda Vanpelt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of SunTrust Mortgage, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 7824 English Hills Road, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $550,000.00 and is encumbered by senior liens securing claims in the amount of $837,574.00, which exceed the value of the Property which is subject to Creditor's lien.

32. 15-24080-E-13 DPC-1 | **HENRY SMART** | **Robert P. Huckaby** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **7-8-15 [19]**

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 8, 2015. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor is unable to make payments as required under 11 U.S.C. § 1325(a)(6). Debtor is not only delinquent $1,382.00, but has also failed to commence plan payments.

2. Trustee asserts that Debtor accounts for debts to Daniel Trevis and El Dorado County in Schedule D, yet does not provide for them in the Plan. Trustee asserts the difficulty it has encountered in deciphering whether Schedule J provides the correct amount of expenses, so as to pay for the claims.

Trustee notes that while CL Faffety El Dorado County Tax Collector filed a claim in the amount of $12,676.05, Debtor's Schedule D lists the amount owed as $1.00.

3. Trustee asserts that while Debtor listed the Franchise Tax Board on Schedule E for $2,000.00 entitled to priority for his 2000-2001 state income, Debtor did not provide for this debt in the Plan.

4. Trustee alleges that Section 6.01 of the Plan states Debtor had a loan modification which the Creditor failed to implement, and consequently the Debtor is to make the primary modified payment directly to the Creditor outside of plan and only pay the arrears through the plan. Trustee asserts that he is not aware of any loan modification, and therefore the ongoing payment should be listed in Class 1 of the Plan.

5. Debtor scheduled the City of South Lake Tahoe as a priority creditor in the amount of $56,000.00. However, counsel for the City of South Lake Tahoe, stated at the 341 Meeting that the amount owed is approximately $95,000.00.

6. Trustee asserts that the Debtor's plan is not his effort, pursuant to 11 U.S.C. § 1325(b). Trustee states that at the First Meeting of Creditors, the Debtor admitted that both his son and nephew were willing to supplement the ongoing mortgage payment. However, the neither the income of the son or nephew was listed on Schedule I and no declaration has been filed stating their ability and willingness to supplement the Debtors income.

7. Debtor's plan appears to not have been proposed in good faith, pursuant to 11 U.S.C. § 1325(a)(3). Trustee notes that a further analysis of Form B22C, the Statement of Current Monthly Income, the Debtor appears to be over the median income. Furthermore, the Debtor has failed to properly complete the CMI, thus in contradiction of 11 U.S.C. §1325(b)(1)(B).

The Trustee's objections are well-taken. The crux of the majority of the Trustee's objections is the failure of the Debtor to not only provide for the payment of certain creditors, namely Daniel Trevis, Franchise Tax Board, and El Dorado County, but also fails to provide the full amount owed to certain creditors, namely City of South Lake Tahoe.

The basis for the Trustee's objection is that the Debtor is delinquent in plan payments. According to the Trustee, the Plan calls for payments to be received by the Trustee not later than the 25 day of each month beginning the month after the order for relief under Chapter 13. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Furthermore, as to the Trustee's other objections, 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11

U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Furthermore, it appears that the Debtor has not accurately and truthfully provided the Debtor's income. Not only did the Debtor not disclose that family members were willing to supplement the mortgage payment but the Debtor also miscalculated the net monthly income by nearly $6,000.00 making it impossible for this court to determine whether the plan is feasible, viable, or even presented in good faith.

The Trustee has highlighted numerous discrepancies and issues arising from the failure of accurately disclosing the Debtor's income but also failure to provide for all creditors that are listed in the petition. The plan, facially, is not confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

33. 15-24080-E-13 RAP-1 — HENRY SMART — Robert P. Huckaby — OBJECTION TO CONFIRMATION OF PLAN BY RONALD P. ELVIDGE — 7-9-15 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 9, 2015. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Ronald Elvidge ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtor's Plan fails under 11 U.S.C. § 1325(a)(1) because does not provide for all secured debts. While the monthly payment to Secured Creditor is $3,350.00, Debtor has not accounted for the ongoing debt of service payments in determining his net income, as stated on his Schedules. Furthermore, Debtor has failed to address tax obligations to the City of South Lake Tahoe for Transient Occupancy Tax, which currently amount to $95,501.51, and are increasing without payment.

2. Debtor's Plan is not feasible, and thus fails under 11 U.S.C. § 1325(a)(6). Debtor stated at the 341 meeting that he will be receiving funds from his son and two nephews to help make payments. However, Debtor has not explained whether these funds are a loan or a gift; how much funds he will receive; whether he will have recourse if he does not receive the funds; or whether these funds will be enough to support the Plan.

3. Debtor is only current on Pre-petition debt owed to El Dorado County for property taxes because Secured Creditor paid those debts to avoid the imposition of additional fees and penalties. The amount paid by Secured Creditor totals $16,685.71, and is not provided for in Debtor's Plan.

4. While Debtor's Plan provides for the claim of South Lake Tahoe Transient Occupancy Tax in the amount of $56,000.00, the actual amount owed is $95,000.00. Debtor has not provided any evidence suggesting that there is an agreement for a lesser payment than the total amount owed.

5. Debtor's Plan violates 11 U.S.C. § 1325(a)(3) and is not proposed in good faith. While Debtor's income, as stated on his Schedules and Statement of Financial Affairs, is $25,653.00 for the first five months of 2015, Debtor projects a gross income of $137,000.00 for the year of 2015. Debtor's gross income for 2013 and 2014 were $87,701.00 and $90,119.00, respectively. Debtor has not explained why he expects such a large increase in gross income for 2015.

6. While Debtor's Plan proposes to pay arrears to Secured Creditor in the amount of $19,680.00, the total arrearage owed is actually $55,769.04. Furthermore, the Plan does not propose to make any interest payments. Therefore, the Plan fails to satisfy 11 U.S.C. § 1325(a)(5).

DISCUSSION

The Creditor's objections are well-taken. Much like the Trustee's Objection, the Creditor's objections deal with the Debtor failing to fully disclose all income, all debts, to provide for all debts, and to propose in good faith.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2),

cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Additionally, the Creditor states that the Debtor has not accurately stated all of the Debtor's income and does not provide for all disposable income into the plan. A review of the Debtor's petition and the information from the Trustee concerning the Meeting of Creditors, it appears that the Debtor is not providing for all disposable income and the plan may not actually be feasible since the court does not have all the accurate, relevant, and required financial information.

Therefore, in total, the Creditor raises legitimate and concerning objections as to whether the Debtor is truthfully providing for and disclosing all of the Debtor's debts and income.

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 Ronald Elvidge 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.

34. 15-23482-E-13 DPC-1 | CHRISTOPHER CONWAY Mikalah R. Liviakis | CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-3-15 [17]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors on May 28, 2015.

JUNE 30, 2015 HEARING

At the hearing, the court continued the Objection to 3:00 p.m. on August 11, 2015 to allow debtors to appear at the rescheduled meeting of creditors.

DISCUSSION

On July 23, 2015, the Trustee reports that Debtor and Debtor's counsel appeared at the Meeting of Creditors. Since the Debtor had appeared at the continued Meeting of Creditors and the Meeting was concluded, the Trustee's objection is overruled.

Additionally, the Trustee filed a Notice of Withdrawal of Trustee's Objection to Confirmation on July 29, 2015. Dckt. 27.

Therefore, in light of the Trustee's withdrawal of the Objection and the

Debtor appearing at the Meeting of Creditors, no further objections remain and the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 29, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 14-28888-E-13 MRL-2 | **JAMES/JENNIFER CRUM** Mikalah R. Liviakis | **OBJECTION TO CLAIM OF ATLAS ACQUISITIONS, LLC, CLAIM NUMBER 8** **6-22-15 [49]**

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

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 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on June 23, 2015. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 8 of Atlas Acquisitions LLC is sustained and the claim is disallowed in its entirety. The request for attorneys' fees is denied.

James and Jennifer Crum, the Chapter 13 Debtor, ("Objecting Debtor") requests that the court disallow the claim of Atlas Acquisitions LLC ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,846.08. Objecting Debtor asserts that, pursuant to California Code of Civil Procedure § 337(1), the statute of limitations has run and therefore, the claim should be disallowed. In the prayer of the Objection Debtor makes the following additional request: "The award of reasonable attorney's fees to Debtors' counsel in the amount of $750.00." Objection, p. 3, Dckt. 49. In the Objection Debtor does not state what statutory or contractual basis exists for awarding prevailing party attorneys' fees.

CREDITOR'S RESPONSE

The Creditor filed a response to the instant Objection on July 28, 2015. Dckt. 68. The Creditor states that it does not contest that the collection of the underlying debt may be beyond the applicable statute of limitations and does not oppose the disallowance of Proof of Claim No. 8.

As to the attorneys' fees request, the Creditor states that Objecting Debtor is not entitled to any attorney fees because Creditor did not violate any rules or court orders by filing the Claim. The Creditor argues that the Creditor's action was permitted under the Code since the Creditor's claim falls withing 11 U.S.C. § 101(5)(A)'s definition of a claim because, although, it may not be enforceable through a state court, it still provides the holder with a "right of payment." Additionally, the Creditor argues that they have met the requirements of Fed. R. Bankr. P. 3001. The Creditor argues that they set forth all the information required under the Rules and, therefore, the Objecting Debtor is not entitled to attorney's fees.

DISCUSSION

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).

Expiration of Statute of Limitations Does Not Extinguish Debt in California

The court notes that in California the statute of limitations is an affirmative defense, which must be asserted by the defendant. It does not work an extinguishment of the underlying debt. *Mitchell v Automobile Owners Indemnity Underwriters*, 19 Cal. 2d 1, 5 (1941), ("The bar of the statute of limitations, however, affects the remedy only and does not impair the obligation."); *Vallbona v. Springer*, 43 Cal. App. 4th 1525, 1535 (1996). This is contrasted with the law in states such as Wisconsin, Wisc. Stat. § 893.05, in which the expiration of the statute of limitations works an actual extinguishment of the debt. FN.1.

FN.1. "893.05. Relation of statute of limitations to right and remedy.

> When the period within which an action may be commenced on a Wisconsin cause of action has expired, the right is extinguished as well as the remedy."

The Statute of Limitations has Expired on Creditor's Claim and the Objection is Sustained

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).

> "Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

In substance, by filing the proof of claim the creditor is giving itself effectively a "judgement" for the amount of the claim, unless an objection to the claim is filed. If the objection is filed, then the parties battle it out, in the same manner as if they were litigating the dispute in an adversary proceeding, district court trial, or superior court trial.

Here, Objecting Debtor has asserted the affirmative defense that the statute of limitations provided for written contracts pursuant to California Code of Civil Procedure § 337 has expired and it is entitled to judgment (the term "judgment" includes an "order." Fed. R. Civ. P. 54(a), Fed. R. Bankr. P. 7045 and 9014) against Creditor on the debt upon which Proof of Claim No. 8 is based.

The evidence presented by Objecting Debtor includes the following. The Proof of Claim states that the "date of charge off" for the debt upon which the claim is based was June 25, 2009. Proof of Claim No. 8 Attachment, p.3. In the Objection Debtor asserts that the last payment was made on this debt in 2008. Debtor Jennifer Crum provides her testimony under penalty of perjury that the last payment made on this debt was in 2008. Declaration, Dckt. 51. The Attachment to the Proof of Claim states that the "Last Payment Date" was December 2, 2008, and the "Last Activity Date" was February 21, 2008. Proof of Claim No. 8 Attachment, p. 3. FN.2.

FN.2. Proof of Claim No. 8 does not define what is meant by "Charge Off Date." From other cases presented and common understanding in the financial community,

a “charge off” is the time which the creditor determines that the debt is not collectable and will be taken as a bad debt deduction for tax purposes. The December 2008 last payment date stated by Creditor shows the last time that any payment was received, so approximately one month later when the next payment was not made would likely be the latest date that Debtor’s default occurred. Even if the “charge off” date was used, the four year statute of limitations expired on June 24, 2013, more than a year prior to the commencement of this bankruptcy case.

Creditor does not advance any arguments or evidence contesting the expiration of the statute of limitations. Clearly this creditor and counsel are experienced enough to know not to push a bad position. Creditor’s response to the statute of limitations defense is, “Atlas does not contest that the collection of the underlying debt may be beyond the applicable statute of limitations and does not oppose the disallowance of Claim No. 8.” Response, p. 2:1-2. The remaining three pages of the Response address why Creditor should not be sanctioned for filing Proof of Claim no. 8.

Allowing for the four year statute of limitations for written contracts, the statute of limitations on the debt upon which Proof of Claim No. 8 is based expired no later than January 1, 2013 (the court conservatively using the Debtor’s testimony that the last payment was made sometime in 2008). This bankruptcy case was filed on September 1, 2014, twenty months after the statute of limitations expired.

The statute of limitations having expired, the Objection is sustained and the claim of Atlas Acquisitions, LLC is disallowed in its entirety.

Right to Attorneys’ Fees

There is no general right to recover attorneys' fees under the Bankruptcy Code. See *In re Kord Enterprises II*, 139 F.3d 684 (9th Cir. 1998) (whether included as part of secured claim); *Heritage Ford v. Baroff (In re Baroff)*, 105 F.3d 439 (9th Cir. 1997) (prevailing party contractual attorneys' fees in nondischargeability action). Under the American Rule, the prevailing party is not entitled to collect reasonable attorneys' fees unless provided for by statute or contract. *Travelers Casualty & Surety of America v. Pacific Gas and Electric Company*, 549 U.S. 443, 448, 127 S. Ct. 1199, 167 L. Ed. 2d 178 (2007). (Enforcing contractual attorneys' fees provision for litigating issues arising under bankruptcy law.) Because state law controls an action on a contract, a party is entitled to attorneys' fees to the extent provided for by the contract. *In re Baroff*, 105 F.3d at 441.

California Civil Code authorizes an award of attorney fees "in any action on a contract" where the contract "specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded . . . ." Cal. Civ. Code § 1717(a). As stated by the Supreme Court in *In re Travelers*, the contract may provide for attorneys' fees for issues beyond litigating the issues of the contract, such as bankruptcy law issues arising in connection with an objection to claim.

The Objecting Debtor does not state in the Motion a basis to justify the grant of attorneys fees. With the amendment of Federal Rule of Bankruptcy Procedure 7008(b), a party is no longer required to state a separate “claim”

for attorneys' fees. As with district court trials, the issue of attorneys' fees may be addressed by post-trial/hearing motions.

Objecting Debtor does cite to Local Bankruptcy Rule 1001-1(g) for the proposition that monetary sanctions may be awarded for failure to comply with said Local Rules, the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, or order of the court. The Objecting Debtor appears to construe this Local Rule as a "catch-all" provision in the same manner that parties and some courts misused 11 U.S.C. § 105(a) as a basis for issuing whatever order struck the court's fancy as fair. First, there is a well established body of law when a prevailing party is entitled to attorneys' fees and costs. Second, there is not an alleged violation of any rule or order of this court.

That there has not been a basis stated in the complaint, motion, or objection for attorneys' fees in no longer a basis for summarily denying the relief. As stated in the Advisory Committee Notes for the 2014 amendment to Bankruptcy Rule 7008,

> "Notes of Advisory Committee on 2014 amendments. The rule is amended to delete subdivision (b), which required a request for attorney's fees always to be pleaded as a claim in an allowed pleading. That requirement, which differed from the practice under the Federal Rules of Civil Procedure, had the potential to serve as a trap for the unwary.
>
> The procedures for seeking an award of attorney's fees are now set out in Rule 7054(b)(2), which makes applicable most of the provisions of Rule 54(d)(2) F.R.Civ.P. As specified by Rule 54(d)(2)(A) and (B) F.R.Civ.P., a claim for attorney's fees must be made by a motion filed no later than 14 days after entry of the judgment unless the governing substantive law requires those fees to be proved at trial as an element of damages. When fees are an element of damages, such as when the terms of a contract provide for the recovery of fees incurred prior to the instant adversary proceeding, the general pleading requirements of this rule still apply."

The court will now proceed under Federal Rule of Civil Procedure 54(b) in having the parties address the request for attorneys' fees.

Further Proceedings To Determine Attorneys' Fees and Costs, If Any, To Be Allowed Prevailing Party

This objection appears to be garden variety civil contract litigation between two parties. On November 17, 2014, Creditor availed itself of the opportunity to file Proof of Claim No. 8 in this case. The basis of this claim is stated to be "Credit Card," which is a claim based on contract. Proof of Claim No. 8, Information Box 2. No copy of the underlying contract is attached and Proof of Claim No. 8 does not state that it was an oral contract.

In general, a claim for attorney's fees generally must be made by motion, served no later than 14 days after entry of judgment. 10-54 Moore's Federal Practice - Civil § 54.151 (Matthew Bender 3d ed.). Fed. R. Civ. P. 54(d); Fed. R. Bank. P. 7054 and 9014 (which incorporates Rule 54 into motion and other

contested matter practice in bankruptcy court).

The court will set as a deadline of August 28, 2015, for Objecting Debtor to file and serve a motion, if any, and supporting pleadings, for prevailing party attorneys' fees

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 Atlas Acquisitions LLC, Creditor filed in this case by James and Jennifer Crum, the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 8 of Atlas Acquisitions LLC is sustained and the claim is disallowed in its entirety.
>
> **IT IS FURTHER ORDERED** that Debtor shall file and serve file and serve a motion, if any, and supporting pleadings, for prevailing party attorneys' fees and costs in connection with this Objection. Debtor shall use Docket Control No. MRL-2 for any motion for the prevailing party attorneys' fees.

36. 14-28888-E-13 JAMES/JENNIFER CRUM MOTION TO SELL
MRL-3 Mikalah R. Liviakis 7-20-15 [53]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2015. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 7525 Circuit Drive, Citrus Heights, California

The proposed purchaser of the Property is Victor J. Fackrell and the terms of the sale are:

1. Purchase price is $230,000.00

2. If the Motion is granted, the Buyer will make a $2,000.00 deposit and then pay the remainder of the purchase price within 30 days after the Motion is granted.

3. Debtor will pay for:

   a. Natural hazard zone disclosure report

   b. Smoke alarm and carbon monoxide device installation

   c. Water heater bracing, if required by law

   d. Half of the escrow fee

   e. The owner's title insurance policy,

   f. The County transfer tax or fee

   g. The cost, not to exceed $535.00, of a one-year home warranty plan.

4. Sale proceeds will be used as follows:

   a. Approximately $23,000.00 for sale costs, including realtor's commission

   b. Approximately $78,000.00 to pay off all the allowed claims filed in Debtor's bankruptcy case

   c. The remainder of the funds, approximately $129,000.00, will go to Debtor.

The Debtor states that they own the Property free and clear. The Debtor notes that there were back taxes owed to the County of Sacramento in the amount of approximately $1,422.60, but that these taxes have already been paid in full through the plan.

The Debtor also seeks the waiver of the 14-day time period of Fed. R. Bankr. P. 6004(h).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on July 27, 2015. Dckt. 58. The Trustee states that he does not opposed the Motion. The Trustee points out that the Motion states that approximately $78,000.00 is to be used to pay off all the allowed claims filed in Debtor's bankruptcy case. The bankruptcy case is currently in its tenth month. The Trustee does not oppose the Motion if it provides that all allowed unsecured claims be paid at 100%.

DEBTOR'S SUPPLEMENT

The Debtor filed a supplement to the Motion on July 27, 2015. Dckt. 60. The Debtor states the terms of the sale nor the allowed claims filed in

Debtor's bankruptcy case will be paid in full from the proceeds of the sale have changed. However, the Debtor states that a review of the title report shows that there are several liens against the Property, including a lien against Debtor Jennifer Crum in the amount of approximately $6,850.28 and a lien against Debtor James Crum in the amount of approximately $21,870.53. The Debtor states that these liens will be paid in full through escrow. This means that the total amount paid to creditors will be closer to $107,000.00, and Debtor will be receiving approximately $100,000.00.

DISCUSSION

At the time of the hearing the court announced the proposed sale an requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The terms of the sale provide for the payment of all liens on the Property as well as additional funds that could be used to pay unsecured creditors a 100% dividend. The court agrees that with the additional funds going towards the plan, the Debtor's plan should provide for the 100% dividend to allowed general unsecured creditors.

Based on the Debtor's desire to no longer live in the Property, the court finds cause to waive the i14-day stay of Fed. R. Bankr. P. 6004(h).

However, the court will not approve or "enforce" the Overbidding Terms set forth in the Motion. Therefore, that request 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 Sell Property filed by James and Jennifer Crum, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the James and Jennifer Crum, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Victor J. Fackrell or nominee ("Buyer"), the Property commonly known as 7525 Circuit Drive, Citrus Heights, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $230,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 56, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. The Chapter 13 Trustee shall make demand for payment directly from Escrow for the monies necessary to provide for payment in full of all allowed claims and administrative expenses in this case. Said amount shall be disbursed to the Trustee directly from Escrow.

5. Upon the Trustee providing the Escrow with confirmation of receipt of the monies directly from Escrow required above, all remaining sale proceeds, after payment of all costs, expenses, and other amounts provided for above and in the Purchase Agreement by James and Jennifer Crum from escrow, may be disbursed directly from Escrow to James and Jennifer Crum.

6. The 14-day stay of Fed. R. Bankr. P. 6004(h) is waived for cause.

37. 15-22489-E-13 JACK DUMIN
RJ-4 Richard L. Jare

MOTION TO VALUE COLLATERAL OF CLEARSPRING LOAN SERVICES, INC.
7-28-15 [52]

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 28, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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 Clearspring Loan Services, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Jack Dumin ("Debtor") to value the secured claim of Clearspring Loan Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2893 Candido Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $155,700.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Debtor seeks to value the secured claim of Clearspring Loan Services, Inc. "as the bearer of note endorsed in blank by New Century Mortgage Corporation."

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 4 filed by Clearspring Loan Services, Inc. is the claim which may be the subject of the present Motion. The Proof of Claim form states that Clearspring Loan Services, Inc. is the creditor. The Proof of Claim is signed by Clearspring Loan Services, Inc., with its representative stating under penalty for Clearspring that "I am the creditor." Proof of Claim no. 4, p. 2.

The attachment to the Proof of Claim states that the lender is "New Century Mortgage Corporation." An undated endorsement in blank stamp by New Century Mortgage Corporation is included as part of the attachment. (The endorsement in blank is a separate page, with the endorsement stranded on a separate page from any of the pages of the note. This may have been because it was on the reverse of the last page of the note, or possibly that it is a "pass around" endorsement used for whatever document it is convenient.)

In the Motion, Debtor asserts that New Century Mortgage Corporation is now "defunct." The California Secretary of State lists a "New Century Mortgage Corporation" having its corporate powers suspended by the Franchise Tax Board, with the agent for service of process having resigned on January 21, 2014. http://kepler.sos.ca.gov/.

Because there is a blank endorsement Debtor concludes that Clearspring

Loan Services, Inc. is the holder of that note. This is consistent with Clearspring Loan Services, Inc. stating (subject to civil corrective and punitive sanctions and criminal prosecution) that it is the creditor.

While such an assumption may be made, the court is always concerned with an entity with the name "servicing," "servicer," or "services" (or the like) as part of the name. More times then not, the entity is not the creditor, is not a holder in possession of bearer paper/endorsed in blank note, and is only a third-party agent to service the creditor's loan.

On its website, Clearspring Loan Services, Inc. describes itself on its "About Us" page as follows:

> "Corporate Information
>
> Reinventing the specialty mortgage servicing process by providing the highest level of customer service to our clients, we are dedicated to high-touch servicing through a combination of process efficiency, innovative technology, and employee expertise.
>
> The ClearSpring team has decades of hands-on expertise in the mortgage and financial industries. Our onsite advisors are trained to have a deep knowledge of specific loan types, your mortgage parameters, and can help with any questions you may have regarding our system or your loan. If you are experiencing financial problems and have difficulty making your mortgage payments, we will work with you to evaluate possible solutions to keep you in your home, if that is your goal.
>
> We treat every client professionally and with respect. With the goal of making your experience as smooth and simple as possible, we focus on technology innovation and efficient processes. We offer a wide variety of convenient contact and payment options, including 24/7 online account access."

http://clearspringls.com/about_us.php.

On the above webpage ClearSpring has a link to what it states is "Legal & Licensing Information." That link produces a PDF document which is titled "Nationwide Mortgage Licensing System (NMLS) Unique Identifier #36716. The document then makes the following statement:

> "Note: ClearSpring Loan Services, Inc. does not originate mortgage loans at this time. Its current **activities are limited to residential mortgage loan servicing and collections**."

http://clearspringls.com/about_us.php., Legal & Licensing Link [emphasis added].

Another link from the above webpage takes one to a table titled "Mortgage Loan Servicing Fee Schedule." http://clearspringls.com/feeschedule.html.

On other portions of the website Clearspring Loan Services, Inc. makes references to third party lenders ("Why would the lender foreclose on my home?" http://clearspringls.com/foreclosure_faq.php), Clearspring Loan Services, Inc.

makes references to providing serves to "clients," at times referencing the debtor as a "client." ("We are here to answer your questions. As an ClearSpring Loan Services? client, we want to make sure we address any questions or concerns you have regarding your mortgage." http://clearspringls.com/faq.php.)

While the information is conflicting, given that Clearspring Loan Services, Inc., and its representative signing the Proof of Claim, have represented subject to corrective and punitive sanctions, as well as criminal penalties, that Clearspring Loan Services, Inc., the court will consider the relief requested by Debtor. FN. 1.

FN.1. The court makes no determination that Clearspring Loan Services, Inc. is the creditor that has the secured claim for which Debtor's residence is the collateral. It is for Debtor's counsel and Debtor to be satisfied that they have accurately identified the real party in interest so as to obtain an effective order of this court. With all of the simple discovery tools available in a bankruptcy case, every consumer and consumer attorney has resources to insure that relief is obtained against the property party.

Notwithstanding proceeding with the Motion, the court will have the Clerk of the Court transmit a copy of this ruling and the order thereon to the Office of the U.S. Trustee for Region 17, Sacramento Division, to the attention of Antonia Darling, Esq, and to the Federal Consumer Financial Protection Bureau, attn: Gail Hillebrand, Esq. The documents are transmitted for information purposes and for the respective offices to consider whether truthful and accurate representations are being made in this case (and possibly other unrelated cases) of the identity of the creditor to the court, consumers, and the trustees.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $177,547.00. Creditor's second deed of trust secures a claim with a balance of approximately $73,034.24. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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 Jack A. Dumin ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Clearspring Loan Services, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 2893 Candido Dr., Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $155,700.00 and is encumbered by senior liens securing claims in the amount of $177,547.00, which exceed the value of the Property which is subject to Creditor's lien.

38. 15-22489-E-13 JACK DUMIN MOTION TO CONFIRM PLAN
RJ-4 Richard L. Jare 7-7-15 [44]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 7, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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 Amended Plan.

Jack Dumin ("Debtor") filed the instant Motion to Confirm the Amended Plan on July 7, 2015. Dckt. 44.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 28, 2015. Dckt. 49. The Trustee objects on the ground that the plan relied on the Motion to Value Collateral of Clear-Spring Loan Services. The court originally denied the Motion to Value on June 2, 2015. Dckt. 37. The Debtor has failed to file another Motion to Value.

Furthermore, the Trustee points out that in the Additional Provisions of the proposed plan, the Debtor proposes that the Internal Revenue Service's § 507(a)(8) priority claim may not be paid in full through the life of the 36 month plan and that any remaining amount not paid through the plan will survive the discharge. The Trustee has no objection to this treatment.

DISCUSSION

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

Motion to Value Secured Claim

As noted in the court's civil minutes when it sustained the Trustee's Objection to Confirmation, the Motion to Value Collateral of Clear-Spring Loan Services, Inc. was denied without prejudice, and, therefore, the Debtor cannot afford to make the payments or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Dckt. 38.

On July 28, 2015, Debtor filed a new Motion to Value the secured claim of Clearspring Loan Services, Inc.. The court has granted that motion, resolving this portion of the Trustee's objection.

Unapproved Stipulation with Internal Revenue Service

The Debtor on July 24, 2015 filed a copy of the stipulation between the Debtor and the Internal Revenue Service which provides for the following:

1. Any unpaid portion of the allowed priority claim, which is presently allowed at $55,497.82, shall be held in abeyance pending the discharge of the Chapter 13 case. Upon the discharge of the Chapter 13 case the Internal Revenue Service may pursue the remainder of the claim against the Debtor.

2. Nothing in this stipulation is to be interpreted as a waiver of any sums claimed by the Internal Revenue Service.

3. This stipulation constitutes the agreement of the Internal Revenue Service to a different treatment of such claim, as it may do pursuant to § 1322(a)(2).

While the court has not "approved" the Stipulation, the court reads it as the consent of the Internal Revenue Service to the treatment proposed in the Plan which does not provide for payment in full of both its Class 2 secured claim in the amount of $884.00 and its priority claim of $55,497.82 through the Plan. The Plan provides payment of the $884.00 secured claim (with 1% interest) over the thirty-six months of the plan.

It appears that from the plan payments, which step up from $260 a month after the first month, to $350.00 a month for three months, then $600 a month, and then $800 a month for the remaining 22 months, the Internal Revenue Service will get whatever money is left after the Trustee has disbursed the following:

A. Debtor's Counsel.....$5,000

B. Creditor for Ford Ranger.....$1,720

C. Creditor for Electronics.....$ 540 (Which appears to be less than the $633.99 amount of the claim which is to be repaid with 5.00% interest, which total amount is approximately $684.04.) FN.1.

D. Creditor for Porsche Boxster.....$7,600 (Which appears less than the $7,449.30 claim amount, which is to be repaid with 5.00% interest, which total amount is approximately $8,037.44.)

E. Creditor for TVs, sound bar, and plant...$540 (Which appears less than the $505 claim amount, which is to be repaid with 5.00% interest, which total amount is approximately $544.87.)

F. Franchise Tax Board.....$875

FN.1. For the loan payment estimate the court used the Microsoft Excel loan calculator program.

Adding up the actual projected payments, including interest, the Internal Revenue Service $884.00 secured claim to be paid with 1% interest, and 7% for Chapter 13 Trustee fees, the court estimates that the plan must be funded as follows:

A. Debtor's Counsel.....$5,000

B. Creditor for Ford Ranger.....$1,720

C. Creditor for Electronics.....$ 684.04

D. Creditor for Porsche Boxster.....$8,037.44.

E. Creditor for TVs, sound bar, and plant...$ 544.87

F. Internal Revenue Service Secured Claim...$ 897.69

G. Franchise Tax Board.....$ 875

Creditor Disbursements $17,758.97

H. Chapter 13 Trustee Fees.....$ 1,243.00

Estimated Necessary Plan Funds $20,201.97

The Debtor is to fund the Plan as follows:

A. $260 x 1 month.....$ 260.00
B. $350 x 3 months.....$ 1,050.00
C. $600 x 10 months.....$ 6,000.00
D. $800 x 22 months.....$17,600.00

Projected Total Plan Payments.....$24,910.00

On its face, the Plan would provide for the other claims, counsel for Debtor, the Chapter 13 Trustee, and approximately $5,000.00 for the Internal Revenue Service Class 5 priority claim.

The amended Plan does comply with 11 U.S.C. §§ 1322, 1323, 1325(a), and

1329, and is confirmed. The order confirming shall expressly state that Internal Revenue Service has agreed to waive the right to require payment in full of its Class 5 priority claim in this case.

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 granted and the 1st Modified Plan filed on June 30, 2015, as amended by the terms stated in the Stipulation with the Internal Revenue Service filed on July 24, 2015 (Dckt. 48), is confirmed. The order confirming shall expressly state that pursuant to the Stipulation (Dckt. 48) the Internal Revenue Service has waived its right to require that its priority claim provided for in Class 5 be paid in full during the term of the Plan. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

39. 15-21293-E-13 GARY BITTERS MOTION TO CONFIRM PLAN
SJS-2 Scott J. Sagaria 6-22-15 [41]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. By the court's calculation, xx days' notice was provided. 42 days' notice is required.

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

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

Gary Bitters ("Debtor") filed the instant Motion to Confirm the Amended Plan on June 22, 2015. Dckt. 41.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on July 27, 2015. Dckt. 50. The Trustee objects on the following grounds:

1. Debtor is $1,852.00 delinquent in plan payments under the proposed plan.

2. Debtor's plan and Debtor's Motion conflict as to the plan payments. Section 6 of the plan calls for a total paid in of $1,800.00 as of June 2, 2015, then payments of $1,856.00 per month. Debtor's Motion, however, states that payments are $1,820.00 per month starting June 25, 2015.

DISCUSSION

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

The Trustee's objections are well-taken. The basis for the Trustee's first objection is that the Debtor is $1,852.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). The Debtor has not filed any responsive pleadings with evidence that the delinquency has been cured.

As to the Trustee's second objection, while the court agrees that it could be clarified in the order confirming as a mere scrivener's error, the fact that the Debtor is delinquent is independent grounds to deny confirmation of the proposed plan.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

40. 14-31394-E-13 JOSEPH IRVIN MOTION TO CONFIRM PLAN
TJW-3 Timothy J. Walsh 6-23-15 [31]

DEBTOR DISMISSED: 06/30/2015

Final Ruling: No appearance at the August 11, 2015 hearing is required.

The Motion to Confirm Plan is Dismissed as moot, the case having been dismissed.

The case having previously been dismissed on June 30, 2015 (Dckt. 37), the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

41. 11-48095-E-13 MICHAEL NEUMANN
LDD-4 Linda Deos

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
6-30-15 [75]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change 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 3007-1 Objection to Notice of Mortgage Payment Change.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Ocwen Loan Servicing, LLC, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 30, 2015. By the court's calculation, 42 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, 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 Objection to Notice of Mortgage Payment Change filed by Ocwen Loan Servicing, LLC is sustained.

Michael Neumann ("Debtor") filed the instant Objection to Ocwen Loan Servicing, LLC's Notice of Mortgage Change, Proof of Claim No. 1-2 on June 30, 2015. Dckt. 75.

The Debtor states that Ocwen Loan Servicing, LLC filed a Notice of Mortgage Payment Change on February 18,, 2013 which lowered Debtor's escrow

payment from $361.78 to $329.36. Debtor did not dispute this change nor was there any mention of an escrow shortage of $4,280.95.

The Debtor states that Ocwen Loan Servicing, LLC filed another Notice of Mortgage Payment Change on February 28, 2014 which lowered the Debtor's escrow payment from $329.36 to $265.84. Once again, the Debtor states that he did not dispute the change nor was there any mention of any escrow shortage.

Ocwen Loan Servicing, LLC filed another Notice of Mortgage Payment Change on April 24, 2015 which proposes to increase the Debtor's escrow payment from $265.84 to $569.31. The Debtor states that Ocwen Loan Servicing, LLC alleges the increase is necessary because of the cost of force placed hazard insurance ($739.00 and a Proof of Claim Escrow Shortage Adjustment of $4,280.95.

The Debtor objects to the adjustment based on the following:

1. The Proof of Claim Escrow Shortage Adjustment of $4,280.95 identified by Ocwen Loan Servicing, LLC in its Notice is already being paid by Debtor through his Chapter 13 plan and the Proof of Claim filed by the predecessor in interest, GMAC. In the Proof of Claim No. 1, GMAC claimed $4,473.33 in pre-petition fees, expenses, and charges.

2. Debtor already paid Ocwen Loan Servicing, LLC to cover an escrow shortage.

3. Debtor has obtained hazard insurance from USAA for $364.00 effective July 1, 2015.

The Debtor asserts that the April 24th Notice by Ocwen Loan Servicing, LLC is a violation of Fed. R. Bankr. P. 3002.1(c) as increasing Debtor's escrow payment would result in Ocwen Loan Servicing, LLC receiving double payment for the pre-petition costs. Additionally, the Debtor asserts that Ocwen Loan Servicing, LLC has already received an escrow shortage from Debtor, and the force placed hazard insurance is unnecessary to protect Ocwen Loan Servicing, LLC's interest in the property.

Based upon the above, the Debtor requests that the court deny the Notice of Mortgage Payment Change and award fees and expenses to the Debtor's counsel and against Ocwen Loan Servicing, LLC in the amount of "at least $750.00."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on July 28, 2015. Dckt. 80. The Trustee states that GMAC Mortgage, LLC filed an amended Proof of Claim on February 14, 2012 regarding Debtor's property commonly known as 4950 3rd Street, Rocklin, California. Creditor's secured claim was for $265,734.51 with arrears of $20,697.98. The Mortgage Proof of Claim Attachment to creditor's claim reflects $4,473.39 of the arrears was for pre-petition fees, expenses and chargers, including an escrow shortage of $1,942.14.

Pite Duncan, LLP, attorneys for Ocwen Loan Servicing, LLC, filed a Notice of Transfer of Claim No. 1 on April 16, 2013, identifying GMAC Mortgage, LLC as the transferor and Ocwen Loan Servicing, LLC as the transferee. Dckt. 63. FN.1.

FN.1. Contrary to the representation in the Notice of Transfer, on July 2, 2015, new counsel for GMAC Mortgage, LLC filed a Request for Special Notice, in which in which GMAC Mortgage, LLC is stated to be the "Secured Creditor" and the "Creditor." Dckt. 78. It appears that consistent with other cases in which it has appeared, Ocwen Loan Servicing, LLC is providing the services of a loan servicer for the creditor and is not the creditor itself.

The Notice of Mortgage Payment Change filed on April 24, 2015, and the Notice at issue in the instant Objection, had an Annual Escrow Disclosure Statement attached which reflected an "Actual Payment From Escrow" in the amount of $4,280.95 in March 2015 for "POC Escrow Shortage Adjustment."

The Trustee states that he is unable to ascertain what the $4,280.95 "POC Escrow Shortage Adjustment" amount is comprised of. Creditor's Proof of Claim No. 1 identified the total of Debtor's pre-petition fees, expenses, and charges, including the escrow shortage, at $4,472.39, which is part of the total mortgage arrears of $20,697.98 being paid through the plan. To date, the Trustee state he has disbursed $12,435.16 in mortgage arrears. Debtor's mortgage payments are current under the confirmed plan, with the Trustee having disbursed $39,866.52.

APPLICABLE LAW

Fed. R. Bankr. P. 3002.1 deals with "Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence." The Rule provides for the following, in relevant part:

> (b) Notice of payment changes
>
> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.
>
> (c) Notice of fees, expenses, and charges
>
> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred. . . .
>
> (i) Failure to notify
>
> If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

NOTICE OF MORTGAGE PAYMENT CHANGE

The court has reviewed the Notice of Mortgage Payment Change filed on April 24, 2015, filed by Ocwen Loan Servicing, LLC. The information in the Notice is summarized as follows:

1. Target Escrow Payment: $295.76 = (1/12th of $3,549.18)

2. Starting Escrow Balance Needed as of July 2015 = $1,478.86

3. The Notice includes a history of this escrow as follows

Month	Projected Payments to Escrow	Projected Payments from Escrow	Description	Projected Ending Balance	Required Balance Projections
Beginning Balance				$-1,803.73	$1,478.86
July 2015	$295.76	$739.00	Lender placed Hazard Insurance	$-2,246.97	$1,035.62
August 2015	$295.76			$-1,951.21	$1,331.38
September 2015	$295.76			$-1,655.45	$1,627.14
October 2015	$295.76			$-1,359.69	$1,922.90
November 2015	$295.76	$1,405.09	County Tax	$-2,469.02	$813.57
December 2015	$295.76			$-2,172.26	$1,109.33
January 2016	$295.76			$-1,877.50	$1,405.09
February 2016	$295.76			$-1,581.74	$1,700.85
March 2016	$295.76	$1,405.09	Count Tax	$-2,691.07***	$591.52 (cushion)

April 2016	$295.76			$-2,395.31	$887.28
May 2016	$295.76			$-2,099.55	$1,183.04
June 2016	$295.76			$-1,803.79	$1,478.80
TOTALS	$3,549.12	$3,549.18			

4. The Notice states that the based on the deficiency of $1,803.73 and the minimum required balance of $591.52, an additional $3,282.59 is needed for the escrow balance which results in the total of $569.31 in new monthly escrow payments.

DISCUSSION

Much like the Debtor and the Trustee, the court is unable to ascertain what and why there is $4,280.95 "POC Escrow Shortage Adjustment" listed on the most recent Notice of Mortgage Payment Change. The confirmed plan provides for the payment to "GMAC Mortgage" in Class 1, with a monthly dividend of $65.95 payment in month 7, $330.85 for months 8-55, and $53.25 for month 56.

The Notice of Mortgage Payment Change filed by Ocwen Loan Servicing, LLC on April 24, 2015 states that the "increase in the escrow payment is due to a shortage amount of $273.55 that has been added to the target escrow payment." Under the Notice, the new escrow payment is "$569.31 escrow: $295.76, shortage: $273.55."

At this point, the Trustee having confirmed that all of the post-petition payments required under the Chapter 13 Plan for both the current monthly payment and the pre-petition arrearage have been made, the court sustains the Objection and finds that Ocwen Loan Servicing, LLC, and any creditor or principal they represent, have not provided evidence that a basis exists for increasing the monthly payment.

It is troubling that Ocwen Loan Servicing, LLC, and any creditor or principal it represents, sought on April 24, 2015, relief from this federal court by filing the Notice to increase the amount of money they demanded to be paid monthly by Debtors, but when the Objection was filed a month later there is no response (not even confirming that a human, clerical error occurred) from Ocwen Loan Servicing, LLC, its creditor client, or its principal.

This lack of response is further troubling in light of the Notice having been signed by an attorney with a law firm which regularly appears in the courts in this District. If an error occurred, the court recognizes that mistakes happen once human being are involved in any transaction. But the silence is deafening from the attorneys who signed the Notice for Ocwen Loan Servicing, LLC, and its creditor client or principal.

ATTORNEYS' FEES

In the Objection to Notice of Mortgage Payment Change Debtor requests the award of not less than $750.00 in legal fees to it as the prevailing party. The Objection directs the court to Federal Rule of Bankruptcy Procedure 3002.1, which provides for an award of attorneys' fees

for the Debtor when the person asserting the mortgage payment change fails (1) to provide the information required in the notice of mortgage payment change, (2) to provide the information supporting a notice of post-petition fees, charges, and costs, or (3) filing a response to a notice of final cure payment. Fed. R. Bankr. P. 3002.1(I).

As addressed above, Ocwen Loan Servicing, LLC, and its creditor client or principal, have failed to provide in the Notice of Mortgage Payment Change information upon which the court can determine such an increase is proper.

The court also notes that previously in this case GMAC Mortgage, LLC has stated that it was entitled to post-petition attorneys' fees on the claim for which the current Notice of Mortgage Payment Change has been filed by Ocwen Loan Servicing, LLC, and its creditor client or principal. See Notice of Post-petition Mortgage Fees, Expenses, and Charges filed on April 9, 2012, asserting the right to $425.00 in post-petition attorneys' fees. Attached to the Proof of Claim No. 1 filed by GMAC Mortgage, Inc. are copies of the Promissory Note and Deed of Trust upon which the Ocwen Loan Servicing, LLC demand for an increased post-petition mortgage payment is based. Paragraph 22 of the Deed of Trust provides, "If the default [breach of any covenant or agreement in the Deed of Trust] is not cured. . . Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to reasonable attorneys' fees and costs of title evidence." The Note in Paragraph 6.(E) provides that in the event of a default in payments, the borrower is obligated to pay the Note holder costs and expenses, including reasonable attorneys' fees.

California Code of Civil Procedure § 1717(a) provides that for any action on a contract in which the contract provides for attorneys' fees and costs to be awarded to one of the parties if they prevail, then the other party shall also be entitled to enforce that provision (even though not named) if such other party is the prevailing party. In this case, through the Notice of [Post-Petition] Mortgage Payment Change Ocwen Loan Servicing, LLC, asserted defaults in the Note and Deed of Trust, asserting that required monetary amounts were not paid.

The court determines that Ocwen Loan Servicing, LLC, and its creditor client or principal, have not show a grounds for increasing the monthly payment of principal, interest, impounds, escrow, or any other amounts for any reason which existed prior to August 1, 2015. The court sustains the objection and disallows the asserted increases in the payments due from Debtor on the note in their entirety.

Prevailing Party Attorneys' Fees

With the 2014 amendment of Federal Rule of Bankruptcy Procedure 7008(b), prevailing party attorneys' fees and costs are generally addressed by post-judgment/order motions in adversary proceedings and contested matters. Fed. R. Bankr. P. 7008(b) and 9014. No longer are parties in adversary proceedings and contested matters required to actually state the grounds upon which the requested attorneys' fees are based as a "claim" in the complaint/motion. Here, the court could sustain the Objection and order the prevailing Debtor to file a motion for attorneys' fees and costs.

In the Objection attorneys' fees of not less than $750.00 are requested.

Debtor does not provide any time sheets or billing statements to support the request for attorneys' fees. No declaration is provided by counsel for Debtor attesting to the billings upon which the fees are based. Rather, Debtor's request, as stated in the Objection, appears to be akin to a flat fee request, just as creditor's attorneys commonly seek for providing legal services in preparing proofs of claim or filing motions for relief from the automatic stay.

It the court were to require a post-judgment/order motion for attorneys fees, it is likely that such fees would balloon to three or four times the $750.00 requested in the Objection. The default of Ocwen Loan Servicing, LLC, and its creditor client or principal, having been entered, the court may consider the relief requested in the motion. Fed. R. Civ. 55, Fed. R. Bankr. P. 7055 and 9014. The court, if proceeding by default and without further hearing, may not grant greater relief beyond what is requested on the face of the complaint/motion.

In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

Here, if computed on a loadstar basis, at $300 an hour, $750 in fees equates to 2.5 hours. At a discounted $250 an hour rate, it would be 3.0 hours. Even at three hours, the amount of time for Debtor's counsel to review the Notice, communicate with the Debtor, draft the Objection, and attend the hearing would not be unreasonable. The $750.00 amount is consistent with what the court sees presented as fix fee amounts for creditors filing "simple" motions.

The court awards the Debtor as the prevailing party in this Contested Matter $750.00 in attorneys' fees. The awarded attorneys' fees shall be paid by Ocwen Loan Servicing, LLC and its principals for which it is an agent or representative for this loan, whether disclosed or undisclosed. The court shall further order that the award of fees and costs cannot be offset by Ocwen Loan Servicing, LLC and its principals for which it is an agent or representative for this loan, whether disclosed or undisclosed, against any obligation arising under or relating to its claim in this case.

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 Notice of Mortgage Payment Change filed by Michael Neumann, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to the Notice of Mortgage Payment Change filed on April 24, 2015, by Ocwen Loan Servicing, LLC, and its principals, whether disclosed or undisclosed, is sustained and that the stated changes in the required escrow payments are disallowed in their entirety. This disallowance is for all asserted increases in the monthly payment of principal, interest, impounds, escrow fees, and any additional amounts for any period prior to August 1, 2015, or based on any asserted payments, advances, non-payments or other amounts which relate to any period prior to August 1, 2015.

IT IS FURTHER ORDERED that Michael Neumann, the Debtor, is awarded $750.00 in prevailing party attorneys' fees and costs in this Contested Matter, which shall be paid by Ocwen Loan Servicing, LLC, and its principals for which it is an agent or representative for this loan, whether disclosed or undisclosed.

IT IS FURTHER ORDERED that the court, by supplemental order in this Contested Matter (using the same Docket Control Number), may award further attorneys' fees incurred in enforcing the award of attorneys' fees provided herein, including for any proceedings to amend the order to add the name of any undisclosed principal.

This Order, including the award of attorneys' fees and costs, constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

IT IS FURTHER ORDERED that this award of attorneys' fees and costs, and the obligation of Ocwen Loan Servicing, LLC and its principals for which it is an agent or representative for this loan, whether disclosed or undisclosed, may not be offset by Ocwen Loan Servicing, LLC and its principals, whether disclosed or undisclosed, for which it is an agent or representative for this loan, and any of their successors or assigns, against any obligation of the Debtor arising from, part of, or related to the Note and Deed of Trust upon which Proof of Claim 1-2 filed in this bankruptcy case is based.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this Order on GMAC Mortgage, Inc., the person filing a claim in this case to which the debt relates, and has had counsel file notice on July 2, 2015, that it GMAC Mortgage, Inc. is a creditor in this case, at the following addresses:

GMAC Mortgage, LLC
Attn: Bankruptcy Department,
Managing Member for Service of Order

1100 Virginia Dr.
Ft. Washington, PA 19034;

GMAC Mortgage, LLC
Aldridge Pite, LLP
c/o: Jonathan C. Cahill, Esq.
4375 Jutland Dr., Suite 200
San Diego, CA 92117

GMAC Mortgage, LLC
CSC-Lawyers Incorporating Service
Attn: Agent for Service of Order
2710 Gateway Oaks Dr., STE 150 N
Sacramento, CA 95833

GMAC Mortgage, LLC
Law Offices of Les Zieve
Attn: Brian Tran, Esq.
30 Corporate Park, Suite 450
Irvine, CA 92606

42. 15-24997-E-13 MET-2 | **DAVID/AMY POST** | **Mary Ellen Terranella** | **MOTION TO VALUE COLLATERAL OF CITIMORTGAGE** | **7-6-15 [18]**

Final Ruling: No appearance at the August 11, 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, parties requesting special notice, and Office of the United States Trustee on July 6, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Citimortgage, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by David L. Post and Amy M. Post ("Debtors") to value the secured claim of Citimortgage, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 836 Flint Way, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $220,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor which appears to be for the claim to be valued.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance

of approximately $356,760.00. Creditor's second deed of trust secures a claim with a balance of approximately $75,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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 David L. Post and Amy M. Post ("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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citimortgage, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 836 Flint Way, Vacaville, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $220,500.00 and is encumbered by senior liens securing claims in the amount of $356,760.00, which exceed the value of the Property which is subject to Creditor's lien.