

2. [15-24907](#)-B-13 YVONNE SILVEIRA
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[17](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on August 3, 2015. The confirmation hearing for the amended plan is yet to be scheduled. The earlier plan filed June 18, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. [15-22108](#)-B-13 PETER/SUSAN SCATENA
JPJ-2 Bonnie Baker

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
7-8-15 [[40](#)]

Final Ruling: No appearance at the August 19, 2015, hearing is required.

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

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtors' claim of exemption for a grandfather clock and grand piano in the amount of \$7,500.00 using the California Code of Civil Procedure § 703.140(b)(4) exemption. This exemption is used for furniture, clothing, books, appliances, animals, crops, and instruments where the value per item cannot exceed \$650.00. Since the accumulative value listed is \$7,500.00 for two items, the Trustee asserts this exemption is improper.

Trustee's objection is sustained and the claimed exemption is disallowed.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. [15-24908](#)-B-13 STEVEN SWAUGER
JPJ-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[24](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and deny the motion to dismiss.

The Trustee objected to confirmation of the plan on the grounds that feasibility depends on the granting of motions to value collateral for Franchise Tax Board and Internal Revenue Services. The court has entered minute orders on August 13, 2015, granting both motions to value collateral. As such, the Trustee's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed June 18, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

5. [15-23109](#)-B-13 ALEX/JACKIE MARTIN
VVF-1 Christian J. Younger

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-21-15 [[28](#)]

HONDA LEASE TRUST VS.

Final Ruling: No appearance at the August 19, 2015, hearing is required.

Honda Lease Trust having filed a Stipulation for Adequate Protection Order Regarding Motion for Relief from the Automatic Stay, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation & Confirm First Amended Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan.

First, Debtors are now current on plan payments. The Debtors paid the Trustee \$201.00 on August 7, 2015.

Second, the Debtors have provided evidence of the increases in their mortgage payments at the amounts specified in their modified plan.

Third, Debtors assert that they have no excess tax withholdings and that they are paying all of their disposable income into the plan.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. [15-23515](#)-B-13 JACQUELINE/ROBERT COONEY OBJECTION TO DEBTORS' CLAIM OF
JPJ-2 Harry D. Roth EXEMPTIONS
6-18-15 [[36](#)]

Final Ruling: No appearance at the August 19, 2015, hearing is required.

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

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee asserts that the Debtors claimed their interest in checking and savings accounts with Bank of America and Bank of the West as exempt under California Code of Civil Procedure § 706.050 with a total value of \$1,469.62. Pursuant to California Code of Civil Procedure § 706.050, this code section is described as Restrictions on Earnings Withholdings. The Debtors have not cited any authority for the proposition that they are entitled to claim their bank accounts as exempt under California Code of Civil Procedure § 706.050.

Trustee's objection is sustained and the claimed exemption is disallowed.

The court shall enter an appropriate civil minute order consistent with this ruling.

8. [15-25118](#)-B-13 CYNTHIA BROWN
JPJ-1 Douglas P. Broomell

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[28](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on July 30, 2015. The confirmation hearing for the amended plan is yet to be scheduled. The earlier plan filed July 29, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

9. [15-24019](#)-B-13 ROY/CHERISE WHITAKER MOTION TO VALUE COLLATERAL OF
RMW-1 Pro Se ALLY FINANCIAL
Thru #10 6-25-15 [[28](#)]

Tentative Ruling: The Motion for Determining Value of Collateral for Lein [sic] Holder Ally Financial 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value collateral as moot.

The motion filed by Roy Whitaker and Cherise Whitaker ("Debtors") to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2011 Chevrolet Silverado ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$22,848.00 as of the petition filing date. As the owner, the Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed on May 28, 2015, by Ally Financial is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that the Debtors' motion is moot. Creditor cites to the court's civil minute order entered on July 9, 2015, granting Creditor's motion for order confirming no automatic stay went into effect. Additionally, Creditor asserts that Debtors' amended plan filed July 15, 2015, which states the Debtors' intent to surrender the Vehicle, supercedes the Debtors' earlier filed motion to value the Vehicle.

The court finds that Debtors' amended plan filed July 15, 2015, supercedes Debtors' motion to value collateral filed June 25, 2015, and that the Debtors' intent is to surrender the Vehicle. As such, the objection is sustained and the motion to value collateral is denied as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. [15-24019](#)-B-13 ROY/CHERISE WHITAKER MOTION TO VALUE COLLATERAL OF
RMW-2 Pro Se FAST AUTO LOAN
6-25-15 [[32](#)]

Final Ruling: No appearance at the August 19, 2015, hearing is required.

The Motion for Determining Value of Collateral for Lein [sic] Holder Fast Auto Loan 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 court's decision is to deny without prejudice the motion to value collateral of Fast Auto Loan.

The motion filed by Roy Whitaker and Cherise Whitaker ("Debtors") to value the secured claim of Fast Auto Loan ("Creditor") is accompanied by Debtors declaration. Debtors are the owner of a 2002 Honda Civic EX ("Vehicle"). Although the Debtors' declaration seeks to value the Vehicle at a replacement value of \$2,500.00 as of the petition filing date, the court finds that the Debtors intended to value the Vehicle at \$2,270.00 based on the filed motion and exhibit. As the owners, the Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a debt owed to Creditor with a balance of approximately \$6,538.00. While the Debtors indicate in their declaration that the age of the vehicle is over 12 years old, the Debtors do not provide a date as to when the purchase-money loan was incurred. As such, the court cannot determine whether the loan was incurred more than 910 days prior to the filing of the petition. Additionally, exhibits must be filed as separate documents pursuant to the Revised Guidelines for the Preparation of Documents EDC 2-901.

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. [13-23221](#)-B-13 ERIC ALSTRAND AND DEBRA MOTION TO MODIFY PLAN
JGD-4 BRIOZA 7-16-15 [[91](#)]

Tentative Ruling: The Motion to Modify Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the plan filed July 15, 2015, does not properly account for all payments Debtors have paid to the Trustee to date. The Debtors have paid a total of \$4,005.00 to the Trustee through July 2015. Commencing August 25, 2015, monthly plan payments shall be \$450.00 for 8 months.

Second, the Debtors have not provided any documentation for the increase in expenses totaling \$750.00 per month. The Debtors have not shown that the increased expenses are reasonable and necessary to the Debtors' estate.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. [15-24826](#)-B-13 CLIFFORD/KATHLEEN
JPJ-1 GIANNUZZI

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
7-30-15 [[28](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, feasibility of the plan depends on the granting of motions to value collateral for PCN Bank and Travis Credit Union. These motions were heard on August 12, 2015, and continued to September 16, 2015, at 10:00 a.m.

Second, the claim of Ocwen Loan Servicing LLC is misclassified as a Class 4 and Class 2A claim. The proper classification is Class 1.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

13. [15-20232](#)-B-13 JASON NGUYEN MOTION TO DISMISS CASE
TLA-3 John G. Downing 8-5-15 [[123](#)]

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, the Debtor's Motion to Dismiss Chapter 13 Case Pursuant to 11 U.S.C. § 1307(b) is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The motion will be determined at the scheduled hearing.

15. [11-26340](#)-B-13 JANET TURK
BLG-3 Chad M. Johnson

MOTION FOR COMPENSATION FOR
PAULDEEP BAINS, DEBTORS
ATTORNEY(S)
7-23-15 [[42](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, the Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$3,500.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 27. The Applicant was paid \$2,000.00 prior to the filing of the petition, and the Trustee has paid \$1,500.00 through the Debtor's Chapter 13 Plan. The Debtor's attorney now seeks additional compensation in the amount of \$960.00 in fees and \$4.71 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 45).

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that the post-confirmation work performed was substantial and unanticipated because the Debtor's withdrawal of funds from her 401K to payoff early the Chapter 13 plan was not anticipated. Applicant additionally asserts that it was unanticipated that the Debtor would need to file a modified Chapter 13 plan because of the early lump sum payoff. The Applicant states that this post-confirmation work was necessary and beneficial to the success of Debtor's ability to complete her Chapter 13 plan.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors. However, the court notes a miscalculation in costs. The cost of postage at \$2.94 (from 6 x \$0.49) and copies at \$1.80 totals \$4.74.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$960.00
Additional Costs and Expenses	\$4.74

The court shall enter an appropriate civil minute order consistent with this ruling.

16. [15-25141](#)-B-13 FRED/SAUNDRA WILLIAMS MOTION TO CONFIRM PLAN
RAC-2 Richard A. Chan 7-7-15 [[20](#)]

Thru #17

Tentative Ruling: The Motion to Confirm the First Amended Chapter 13 Plan Filed 7/02/2015 has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

Feasibility of the plan depends on the granting of a motion to value collateral for Real Time Resolutions. This matter was heard on August 12, 2015 and denied without prejudice since there was no evidence that Real Time Resolutions is the actual creditor or lienholder/beneficiary under the second deed of trust, which was the subject of the motion and the secured claim the Debtors asked the court to value. According to Schedule D, the lienholder under the second deed of trust is Nationwide Acceptance. Additionally, Nationwide Acceptance was not served as indicated in the Proof of Service (Dkt. 13).

Since the date of the August 12, 2015, hearing, Debtors' attorney has contacted Nationwide Acceptance and Real Time Resolutions. Debtors' attorney was told by the bankruptcy department of Real Time Resolutions that the loan for the second deed of trust showed inactive because records indicate the property had been short sold. Debtors assert that they have not attempted to short sale and that this information is erroneous. Debtors' attorney was told that the issue would be sent to the research department.

Debtors assert that when such information is ascertained, their schedules will be amended, a new motion to value filed with the court, and a second amended plan and motion to confirm said plan.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

17. [15-25141](#)-B-13 FRED/SAUNDRA WILLIAMS COUNTER MOTION TO DISMISS CASE
RAC-2 Richard A. Chan 8-4-15 [[27](#)]

Tentative Ruling: The motion will be conditionally denied.

Because the plan proposed by the Debtor is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 150 days, the time period requested by the Debtors in order to further research into the erroneous information of Real Time Resolutions that their property was short sold (Dkt. 31), the case will be dismissed on the Trustee's ex parte application.

18. [15-20442](#)-B-13 JAMES SISEMORE MOTION TO CONFIRM PLAN
CAH-1 C. Anthony Hughes 7-7-15 [[55](#)]

Thru #19

Tentative Ruling: The Debtor's Motion to Confirm Debtor's First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Oppositions having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is \$81,418.75. The total amount that will be paid to unsecured creditors is only \$70,858.23.

Second, the Debtor did not disclose his two prior bankruptcies (Case Nos. 10-23952 and 11-41808) in his petition.

Third, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

Fourth, the Debtor is delinquent to the Trustee in the amount of \$112.00, which represents approximately 0.04 plan payment. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the plan does not adequately provide for Internal Revenue Service's tax lien. Additionally, the Debtor failed to timely file 941 and 940 tax returns before the meeting of creditors, as required by 11 U.S.C. § 1308. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

19. [15-20442](#)-B-13 JAMES SISEMORE MOTION TO CONVERT CASE FROM
JPJ-3 C. Anthony Hughes CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
7-1-15 [[50](#)]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to dismiss the case.

The Trustee moves for an order to convert or dismiss the case on the grounds that: (1) conversion to a Chapter 7 is in the best interest of creditors pursuant to 11 U.S.C. § 1307(c), (2) the Debtor has not taken further action to confirm a plan in the case and thereby causing an unreasonable delay that is prejudicial to creditors pursuant to 11

U.S.C. § 1307(c)(1), and (3) the Debtor is delinquent to the Trustee.

In addition, the Internal Revenue Service ("IRS") has stated its support to convert or dismiss the case (Dkt. 61).

RESPONSE BY DEBTOR

Debtor asserts that conversion to Chapter 7 is not in the best interest of creditors since the claim of IRS fully encumbers the non-exempt property of \$81,418.75 listed in Schedule B. Debtor further asserts that because he anticipates the IRS will request this motion be continued in order to file an amended proof of claim and because the Trustee will not continue this motion, the Debtor requests that the current plan be dismissed rather than converted.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: Pauldeep Bains' First Motion for Compensation in the Amount of \$1,356.00 and Reimbursement of Cost in the amount of \$45.70 for an Aggregate of \$1,401.70 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 court's decision is to deny with prejudice the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Pauldeep Bains ("Applicant") submits this motion for additional compensation after a previous motion for compensation filed July 10, 2015, was denied without prejudice since it was an ex parte application and requested fees for administrative staff. The court will not award fees attributed to "administrative staff," which is distinct from paralegal services and is more in the nature of secretarial and office staff services.

The Applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$3,500.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 56. The Applicant was paid \$1,700.00 prior to the filing of the petition, and the Trustee paid \$1,800.00 through the plan. On June 30, 2014 (Dkt. 88), the court granted additional fees and costs totaling \$998.71, which was also paid by the Trustee through the plan.

The Debtor's attorney now seeks additional compensation in the amount of \$1,356.00 in fees and \$45.70 in costs. Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 134).

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it was unanticipated that the Debtors would become delinquent on their plan payments due to a lower income. Applicant additionally asserts that it was unanticipated that the Joint Debtor would need to go on disability. As such, Applicant states that it was unanticipated that Debtors would need to file a modified Chapter 13 plan because of lower income in order to remain in an active Chapter 13 proceeding.

While the court finds the work to be substantial and unanticipated, the court does not find the compensation sought to be made in good faith. In fact, Applicant has made a willful misrepresentation in its motion for compensation.

ADDITIONAL FEES

The Applicant's earlier motion for compensation requested \$954.00 in additional fees. In the present motion, the Applicant requests \$1,356.00 - an increase of over \$400 - by

adding fees to work listed in the earlier motion that was not originally billed.¹ Specifically:

Date	Work Performed	Motion for Compensation filed 7/10/15 (Dkt. 128, Exh. A)	Motion for Compensation filed 7/22/15 (Dkt. 134, Exh. B)
4/09/15	Review objection to confirmation; email attorney	N/C (\$0.00)	\$37.00
4/15/15	Send a detailed email to client about payments	N/C (\$0.00)	\$60.00
6/18/15	Prepare for, travel to and attend MTM BLG-6 hearing	N/C (\$0.00)	\$150.00
7/11/15; 7/15/15	Prepare Motion for Compensation	N/C (\$0.00)	\$185.00
Total			\$432.00

ADDITIONAL COSTS

The court notes that the Applicant has also willfully increased its costs from \$22.63 to \$45.70. This increase is due to Applicant billing \$23.07 for "Filed and Served POS for MTM BLG-6" (aka. proof of service expenditures relating to the Motion to Confirm Second Modified Plan Filed 4/29/15), which was not billed in the earlier motion:

Costs / Expenditures	Work Performed	Motion for Compensation filed 7/10/15 (Dkt. 128, Exh. A)	Motion for Compensation filed 7/22/15 (Dkt. 134, Exh. B)
Photocopies	Filed and served POS for MTM BLG-6	N/C (\$0.00)	\$6.75
Postage	Filed and served POS for MTM BLG-6	N/C (\$0.00)	\$16.32
Total			\$23.07

The court finds that the Applicant acted in bad faith and willfully misrepresented its fees and costs when it chose not to bill its clients in an earlier motion, and thereafter chose to bill its clients in a later motion. The motion for compensation is denied with prejudice, and the Applicant shall not be awarded \$1,356.00 in additional fees or \$45.70 in additional costs.

The court shall enter an appropriate civil minute order consistent with this ruling.

¹ The court notes that the Applicant did correct a miscalculation for work performed on 2/25/15 from \$270.00 to \$240.00.

21. [14-21547](#)-B-13 JENNINE QUIRING
JPJ-3 Rick Morin

MOTION TO RECONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE
7-2-15 [[87](#)]

Tentative Ruling: The Trustee's Motion to Re-Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue the motion to reconvert or dismiss case to September 16, 2015, at 10:00 a.m.

Trustee asserts that the Debtor is delinquent to the Trustee in the amount \$3,351.00, which represents approximately three plan payments. By the time this matter is heard, an additional plan payment in the amount \$1,117.00 will be due. The Trustee asserts that the Debtor does not appear to be able to make plan payments proposed. As such, conversion to Chapter 7 is in the best interest of creditors pursuant to 11 U.S.C. § 1307(c).

In response, the Debtor requests that the court deny or continue the Trustee's motion to allow the court to consider Debtor's modified plan. Debtor filed a modified plan on August 11, 2015. The confirmation hearing for the modified plan is scheduled for September 16, 2015, at 10:00 a.m. As such, the Trustee's motion is continued to that date.

The court shall enter an appropriate civil minute order consistent with this ruling.

22. [15-22254](#)-B-13 MIKHAIL/YULIYA VARSENTIN MOTION FOR ADMINISTRATIVE
KMD-2 Mark Shmorgon EXPENSES
Thru #24 7-3-15 [[65](#)]

Final Ruling: No appearance at the August 19, 2015 hearing is required.

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

The court's decision is to deny the motion without prejudice.

Hunt Construction Co. ("Creditor") entered into a commercial lease with Mikhail Varkentin and Yuliya Varkentin ("Debtors") for real property commonly known as 57-1 88th Street, Unit B, Sacramento, California ("Premises"). Creditor asserts that rent accrued post-petition and prior to the rejection of the subject lease for a period of more than one month. During that time, Creditor asserts that the Premises were occupied by property belonging to the estate, including but not limited to motor vehicles and business records of the Debtors. Creditor asserts that the Co-Debtor actively operated his business, which was his sole source of income for Debtors' plan payments. As such, Creditor requests administrative expenses in the amount of \$15,955.68 through July 3, 2015, plus \$153.42/day until possession is restored to Creditor.

Creditor states its motion is accompanied by a declaration. However, no declaration has been filed with the court.

11 U.S.C. § 503(b)(1)(A) prescribes that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1)(A) the actual, necessary costs and expenses of preserving the estate."

The court does not find that the administrative expenses were an actual and necessary cost of preserving the estate. Creditor merely asserts that Debtors' housed their motor vehicles and business records at the Premises, that Co-Debtor is continuously operating his business within the Premises, and that the operation of Co-Debtor's business provides the sole source of income for Debtors' plan payments. However, Creditor provides no declaration or exhibits to support its assertions. As such, the motion is denied without prejudice and the Creditor is not awarded administrative expenses.

The court shall enter an appropriate civil minute order consistent with this ruling.

23. [15-22254](#)-B-13 MIKHAIL/YULIYA VARSENTIN MOTION TO CONFIRM PLAN
MS-4 Mark Shmorgon 6-16-15 [[49](#)]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*,

46 F.3d 52, 53 (9th Cir. 1995). Oppositions having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the first amended plan.

The Debtors are delinquent to the Trustee in the amount of \$207.00, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the plan filed June 16, 2015, complies with 11 U.S.C. § 1325(a)(6).

The objection with regard to feasibility of the plan being dependent upon the granting of a motion to avoid lien of Hunt Construction for a Toyota Prius is no longer at issue. The motion to avoid lien was granted at Item #24.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

24. [15-22254](#)-B-13 MIKHAIL/YULIYA VARSENTIN MOTION TO AVOID LIEN OF HUNT
MS-5 Mark Shmorgon CONSTRUCTION CO.
7-1-15 [[55](#)]

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

The court's decision is to grant the motion.

This is a request for an order avoiding the lien of Hunt Construction Co. ("Creditor") against personal property of Mikhail Varkentin and Yuliya Varkentin ("Debtors"), specifically one 2005 Toyota Prius (VIN ending in -19014). The motion states that it is brought under 11 U.S.C. § 522(f)(1)(B) (Dkt. 55, p. 1).

Pursuant to the Debtors' Schedule B, the 2005 Toyota Prius has a value of \$3,000.00 as of the date of the petition. However, the Creditor has placed a value of \$10,000 on the Debtors' business equipment, specifically frame equipment, lift equipment, and the Prius. Debtors agree with that valuation.

Opposition by Creditor

Creditor asserts that the Debtors have not demonstrated how the Toyota Prius qualifies as a tool of the trade. Creditor asserts that in order to qualify as a tool of the trade, the property claimed as exempt must be used for the purpose of making a living. Creditor further asserts that avoiding the secured lien leaves Creditor with inadequate security for payment of its claims. Creditor asserts that it provided valuable consideration, in the form of a lease, to Debtors in exchange for the security interest in the Toyota Prius.

Discussion

Debtors have claimed an exemption in the amount of \$3,000.00 with regard to the 2005 Toyota Prius. The Debtors have amended Schedule C (Dkt. 60) to exempt the Prius as a tool of the trade under Code of Civil Procedure § 703.140(b)(6). Additionally, Debtors have offered into evidence a copy of their 2004 tax return (Dkt. 79) wherein they claim a 100% business use of the Prius for the auto business and assert the Prius has been used for business purposes since February 12, 2012. As such, the Creditor's security interest is subject to avoidance because the tool of trade exemption is within

the categories listed in § 522(f) (1) (B) (I)-(iii).

The court shall enter an appropriate civil minute order consistent with this ruling.

25. [15-25155](#)-B-13 DOUGLAS/DENISE BRITT
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[27](#)]

Add on #42

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

The court's decision is to overrule the objection and deny the motion to dismiss, subject to the granting of a motion to value collateral for HFC Beneficial at Item #42.

First, the Debtor asserts it will be current on their plan payment by the date of this hearing.

Second, feasibility of the plan depends on the granting of motions to value collateral of HFC Beneficial and Bank of America Home Loans. The motion to value collateral of Bank of America Home Loans is scheduled for August 17, 2015, before the Hon. Michael S. McManus. The motion to value collateral of HFC Beneficial has been continued to August 19, 2015, in order for Debtors' attorney to show that Fed. R. Bankr. P. 7004(h) does not apply and that service by first-class mail as stated in the certificate of service, rather than by certified mail, is valid.

If the aforementioned issues are resolved at the time of the hearing, the plan would be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). As such, the objection would be overruled, the motion denied, and the plan filed June 26, 2015, would be confirmed. If not, the plan will not be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

26. [15-25062](#)-B-13 WESLEY/LAURIE PAMPLONA
JPJ-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[19](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on August 7, 2015. The confirmation hearing for the amended plan has yet to be scheduled. The earlier plan filed June 26, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

27. [15-22464](#)-B-13 BRANT POWNER
RAH-1 Richard A. Hall

MOTION TO CONFIRM PLAN
7-1-15 [[39](#)]

Final Ruling: No appearance at the August 19, 2015 hearing is required.

The Motion to Confirm the Second Amended Plan Dated July 1, 2015, has been set for hearing on the 42-days' 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 court's decision is to confirm the second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 1, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

Final Ruling: No appearance at the August 19, 2015 hearing is required.

The Motion to Value Collateral 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 court's decision is to value the secured claim of Bank of New York Melon and serviced by Green Tree Servicing, LLC at \$0.00.

The motion to value filed by Thomas Shumate and Shannon Shumate ("Debtors") to value the secured claim of Bank of New York Melon and serviced by Green Tree Servicing, LLC ("Creditor") is accompanied by Co-Debtor's declaration. Debtors are the owner of the subject real property commonly known as 5868 Herbert Court, Loomis, California ("Property"). Debtors seek to value the Property at a fair market value of \$339,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 the creditor's secured claim (rights and interest in collateral), the 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 Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$385,160.72. Creditor's second deed of trust secures a claim with a balance of approximately \$65,539.68 as stated in the declaration. 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 enter an appropriate civil minute order consistent with this ruling.

29. [15-24770](#)-B-13 MICHAEL/MICHELLE BAYS OBJECTION TO CONFIRMATION OF
BHT-1 Scott D. Shumaker PLAN BY SAFE CREDIT UNION
Thru #30 7-13-15 [[37](#)]

Tentative Ruling: The Opposition to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Debtors plan does not account for the pre-petition arrears owed to Safe Credit Union pursuant to 11 U.S.C. §§ 1325(a)(5)(B)(ii) and 1325(a)(6).

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

The court shall enter an appropriate civil minute order consistent with this ruling.

30. [15-24770](#)-B-13 MICHAEL/MICHELLE BAYS OBJECTION TO CONFIRMATION OF
JPJ-1 Scott D. Shumaker PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[49](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

Feasibility of the plan depends on the granting of motions to value collateral of Wells Fargo and Travis Federal Credit Union. The motion to value collateral of Wells Fargo is schedule to be heard on August 17, 2015, before the Hon. Michael S. McManus. The motion to value collateral of Travis Federal Credit Union was heard on August 12, 2015, but denied without prejudice because the Debtors did not provide a date the purchase-money loan was incurred and the court could not determine whether the loan was incurred more than 910 days prior to the filing of the petition. The plan cannot be confirmed unless the motions to value collateral are granted.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

31. [15-22971](#)-B-13 PORFIRIO/NORMA FAJARDO
JPJ-2 Ulric N. Duverney

OBJECTION TO DEBTORS' CLAIM OF
EXEMPTIONS
6-18-15 [[23](#)]

Final Ruling: No appearance at the August 19, 2015, hearing is required.

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

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee asserts that the Debtors claimed their interest in their bank accounts with Chase Bank and Wells Fargo Bank, with a total value of \$26.00 as exempt under the Social Security Deposits exemption of California Code of Civil Procedure § 704.080, which is improper. This code section is reserved for debtors who receive SSI, public benefits, or Social Security. According to Schedule I filed on April 13, 2015, the Debtors do not receive Social Security. The Debtors have not cited any authority for the proposition that they are entitled to claim their bank accounts as exempt under California Code of Civil Procedure § 704.080.

Trustee's objection is sustained and the claimed exemption is disallowed.

The court shall enter an appropriate civil minute order consistent with this ruling.

32. [15-24771](#)-B-13 CARLOS MAXIMO, JR. AND OBJECTION TO CONFIRMATION OF
RDW-1 ELIZABETH MAXIMO PLAN BY PACIFICA LOAN POOL, LLC
Gerald L. White 7-30-15 [[15](#)]

Tentative Ruling: The Objections to Confirmation of Plan was filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtors have filed a written reply to the objection.

The court's decision is to overrule the objection.

Pacifica Loan Pool, LLC did not submit a declaration with its objection. As such, the objection is overruled.

33. [15-24871](#)-B-13 EDUARD BANADA
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-30-15 [[27](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor did not appear at the duly noticed first meeting of creditors set for July 23, 2015, as required pursuant to 11 U.S.C. § 343

Second, the Debtor is delinquent to the Trustee in the amount of \$100.00, which represents the first plan payment that was due July 25, 2015. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60 day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fifth, the Debtor has not utilized the mandatory Official Bankruptcy Form No. B22C1 and Form No. B22C2 effective December 2014.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, Joint Debtor Traci Bisagno did not appear at the duly noticed first meeting of creditors set for July 23, 2015, as required pursuant to 11 U.S.C. § 343.

Second, the Debtors are delinquent to the Trustee in the amount of \$1,400.00, which represents the first plan payment that was due July 25, 2015. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtors have not utilized the mandatory Official Bankruptcy Forms 6I and 6J effective December 1, 2013.

Fourth, to date, the Debtors have not provided the Trustee with a Class 1 Checklist and Authorization to Release. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Fifth, the plan specifies arrearage dividend of \$0.00 to Specialized Loan Service in Class 1. It is not possible for the Trustee to pay the claim of this creditor through the plan with a monthly dividend specified at \$0.00.

Sixth, the plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate and monthly dividend. The Trustee is therefore unable to fully comply with § 2.08(b) of the plan.

Seventh, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A, B, and C, the total value of non-exempt property in the estate is \$5,100.00. The total amount that will be paid to unsecured creditors is only \$0.00.

Eighth, the plan will take approximately 317 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

Final Ruling: No appearance at the August 19, 2015 hearing is required.

The Application for Approval of Debtors (sic) Attorney Fee and/or Costs in Chapter 13 Case 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 court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Lucas Garcia ("Applicant"), attorney to Chapter 13 Debtor Sidne Allinger ("Client"), submits this motion for additional compensation after a previous motion for compensation filed May 29, 2015, was denied without prejudice since administrative staff time was billed. The court will not award fees attributed to "administrative staff," which is distinct from paralegal services and is more in the nature of secretarial and office staff services. The Applicant was permitted to file a new motion and supporting declaration correcting its time entry and classifications.

Applicant makes a request for the allowance of \$5,413.62 in fees and expenses. This allowance reflects a reduction of \$669.50 in administrative staff time that was included in Applicant's previous motion. The Client has opted out of the Guidelines (Order Confirming Plan, Dkt. 35, p. 2). The period for which the fees are requested is for October 9, 2012, through May 29, 2015.

After reduction by the amounts of \$3,106.00 held in trust, \$1,438.95 already paid by the Trustee, and \$669.50 in "legal staff hours," the remaining unpaid balance sought equals \$868.67.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 109, Exh. A).

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

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

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

Id. at 959.

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

The Trustee is authorized to pay the following amounts as compensation to this professional in this case:

Additional fees, costs, and expenses \$ 868.67

The court shall enter an appropriate civil minute order consistent with this ruling.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, Motion to Value Collateral of HSBC Bank, USA, N.A. is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to value the secured claim of HSBC Bank, USA, N.A. at \$0.00.

The motion to value filed by Richard Parrish and Angela Parrish ("Debtors") to value the secured claim of HSBC Bank, USA, N.A. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 2195 Cox Lane, Fairfield, California ("Property"). Debtors seek to value the Property at a fair market value of \$460,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 the creditor's secured claim (rights and interest in collateral), the 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 Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$589,000.00. Creditor's second deed of trust secures a claim with a balance of approximately \$51,350.81. 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 enter an appropriate civil minute order consistent with this ruling.

37. [15-24284](#)-B-13 SHARLYN SWENDSEN
BHT-108176 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-16-15 [[29](#)]

OCWEN LOAN SERVICING, LLC
VS.

Final Ruling: No appearance at the August 19, 2015 hearing is required.

CONTINUED TO 8/24/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

Final Ruling: No appearance at the August 19, 2015, hearing is required.

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

The court's decision is to permit the loan modification requested.

The motion filed by Terry Johnson and Earma Johnson ("Debtors") seek court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor") has agreed to a loan modification on the existing mortgage encumbering the Debtors' rental property. However, Creditor is not listed as the holder of the Class 4 secured rental property; instead, GMAC Mortgage is listed. Nonetheless, Debtors assert that all creditors with liens and security interests encumbering the rental property will be accounted. The terms of the modified loan with Creditor provides an interest rate of the modified loan at 5.00% for years 1 to 5, and then 7.00% for years 6 to the loan's maturity. The modified monthly payment of principal and interest will be \$657.53 for years 1 to 5, and then \$765.19 for years 6 to the loan's maturity. The estimated modified payment amount including taxes and insurance will be \$813.99 for years 1 to 5, and will adjust annually per the escrow analysis.

The motion is supported by the Declaration of Earma Johnson. The Declaration affirms Debtors' desire to obtain the post-petition financing and states that the Debtors can better maintain their current plan payments and fulfill their Chapter 13 obligations under a budget they can better afford.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

39. [15-22793](#)-B-13 GOVIND/SAKUNTALA SAMY OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 Rick Morin EXEMPTIONS
6-18-15 [[30](#)]

Final Ruling: No appearance at the August 19, 2015, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Debtors' Claim of Exemption, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

Final Ruling: No appearance at the August 19, 2015 hearing is required.

The Motion to Confirm Amended Plan has been set for hearing on the 42-days' 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 court's decision is to continue the motion to August 26, 2015, at 10:00 a.m.

Although no opposition has been filed by the Trustee or creditors, the plan's feasibility depends on the Debtors successfully prosecuting a motion to value the collateral of Wells Fargo Bank, N.A. This motion was filed, served, and continued to August 17, 2015 at 1:30 p.m. to be heard before the Hon. Michael S. McManus. Absent a successful motion, the Debtors cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Until a formal order has been entered with regard to the motion to value collateral, the court cannot yet determine whether the amended plan filed on June 9, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a). The motion will be continued to August 26, 2015, at 10:00 a.m.

The court shall enter an appropriate civil minute order consistent with this ruling.

41. [14-28940](#)-B-13 TERRANCE JR. AND BRIGETTE CONTINUED MOTION TO CONVERT
JPJ-1 ZACHERY CASE FROM CHAPTER 13 TO CHAPTER
Susan Terrado 7 AND/OR MOTION TO DISMISS CASE
6-15-15 [[23](#)]

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was originally given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. This motion has been continued from July 1, 2015, and August, 12, 2015.

The motion will be determined at the scheduled hearing.

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

The court's decision is to value the secured claim of HFC Beneficial at \$0.00.

This tentative is conditional upon a showing, at the time of the hearing, that Fed. R. Bankr. P. 7004(h) does not apply and that service by first-class mail as stated in the certificate of service, rather than by certified mail, is valid.

The motion to value filed by Douglas Britt and Denis Britt ("Debtors") to value the secured claim of HFC Beneficial ("Creditor") is accompanied by Debtors' declaration. Debtors the owners of the subject real property commonly known as 6204 Carlow Drive, Citrus Heights, California ("Property"). Debtors seek to value the Property at a fair market value of \$167,991.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 the creditor's secured claim (rights and interest in collateral), the 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 Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$213,689.44. Creditor's second deed of trust secures a claim with a balance of approximately \$94,490.15. 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 conditionally granted as stated herein above.

The court shall enter an appropriate civil minute order consistent with this ruling.

43. [15-24484](#)-B-13 JESSICA THOENE
JPJ-1 Robert Fong

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
7-15-15 [[14](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the August 12, 2015, hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor did not provide proof of her social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the Debtor has not provided the Trustee with a copy of business items relating to Debtor's business Keller Williams Brokerage. It cannot be determined if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Third, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses for the Debtor's rental property.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.