UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

September 1, 2015 at 2:00 P.M.

1.	15-20502-C-13 CMO-10	MICHAEL/ANGELA CRAIK Cara O'Neill	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 7-31-15 [65]

Also #2

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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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 31, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1808 San Gabriel Street, Roseville, California. The Debtors seeks to value the property at a fair market value of $375.000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See*

Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $387,728.16. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $39,084.08. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

Bank of America, N.A., Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to $400,919 based on their automated valuation model (see Exhibit A). Creditor argues that under 11 U.S.C. § 506(a), the value of a property is a factual issue and, in this instance, requires the admission of expert testimony. Creditor requests a continuance to obtain its own verified appraisal of the subject property.

Discussion

Given that the value of the subject property is in dispute, the court's decision is to schedule an evidentiary hearing regarding valuation.

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 Value Collateral filed by 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) will be set for evidentiary hearing. is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 1808 San Gabriel Street, Roseville, 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 confirm bankruptcy plan. The value of the Property is $315,000.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

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2. 15-20502-C-13 CMO-11 | MICHAEL/ANGELA CRAIK
Cara O'Neill | MOTION TO VALUE COLLATERAL OF TD BANK U.S.A., N.A.
7-31-15 [69]

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 31, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of TD Bank U.S.A., N.A., "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1808 San Gabriel Street, Roseville, California. The Debtors seeks to value the property at a fair market value of $375.000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $387,728.16. The holder of the Second Deed of Trust is Bank of America, N.A. and they hold a secured interest in the debtors' property for $39,084.08. TD Bank, U.S.A., N.A. the holder of a Superior Court judgment recorded in Placer County on June 24, 2014 in the amount of $5,390.09, is in third position. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by 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 TD Bank U.S.A., N.A. secured by a judgment lien deed of trust recorded against the real property commonly known as 1808 San Gabriel Street, Roseville, 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 confirm bankruptcy plan. The value of the Property is $375,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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3.	15-25208-C-13 PGM-1	ANGELIQUE ONEILL AND ANTHONY LOGAN Peter Macaluso	MOTION TO VALUE COLLATERAL OF NATIONWIDE WEST, LLC 7-31-15 [20]

Also #4

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 31, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Nationwide West, LLC, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2002 GMC Denali. The Debtor seeks to value the property at a replacement value of $2,976 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 2012, more than 910 days prior to the filing of the petition, with a balance of approximately $8,138. Therefore, the respondent 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 $2,976. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nationwide West, LLC secured by the property commonly known as 2002 GMC Denali, is determined to be a secured claim in the amount of $2,976, 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 $2,976.

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4.	15-25208-C-13 DPC-1	ANGELIQUE ONEILL AND ANTHONY LOGAN Peter Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-31-15 [16]

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

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.

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 31, 2015. Fourteen days' notice is required. That requirement was met.

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a motion to value collateral being filed for Nationwide West.

The court has granted the debtor's motion to value collateral being filed for Nationwide West. Seeing that the Trustee's only objection to confirmation has been resolved, the objection is overruled. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

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 29, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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5.	15-24912-C-13 DPC-1	CHRISTOPHER/WENDY THOMAS Scott Shumaker	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-29-15 [22]

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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 29, 2015. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The plan relies on a motion to value collateral for Portfolio Recovery Associates set for hearing on August 11, 2015.

2. The Additional Provisions call for "Attorney's Fees shall be paid prior to distribution on Class 1 arrears, Class 2 claims or unsecured non-priority claims." The Trustee cannot pay attorney fees prior to Portfolio Recovery Associates in Class 2 as Purchase Money Security Interest Creditor, who is entitled to pre-confirmation payments.

Discussion

The docket reflects that the court filed an order granting the motion to value collateral for Portfolio Recovery Associates heard on August 11, 2015. Dckt. 28. Thus, the Trustee's first objection has been resolved.

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

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

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

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6.	15-24114-C-13 LRR-1	EMERSON SCHENCK Len ReidReynoso	OBJECTION TO CLAIM OF LES SCHWAB TIRE CENTERS OF CALIFORNIA, INC., CLAIM NUMBER 2 7-16-15 [26]

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 16, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

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

The Objection to Proof of Claim Number 2 of Les Schwab Tire Centers of California, Inc. is sustained, and the claim is disallowed in its entirety.

Emerson Lowell Schenk III, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Les Schwab Tire Centers of California, Inc. ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $11,593.90. Objector asserts that the claim was filed against Diamond K Enterprises, Inc. in addition to Objector. Objector notes that this is a personal, rather than corporate bankruptcy, and since the claim at issue is a corporate debt, it should not be treated as a debt of the personal bankruptcy. Objector also reports that this debt is currently being paid directly to Creditor through the corporation at 10% of the outstanding balance per month.

Trustee's Response

The Chapter 13 Trustee filed a statement of nonopposition.

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).

Objector has presented evidence that the claim at issue is based on a corporate debt. Since this case is a personal bankruptcy, the bankruptcy estate is not liable for the debt.

Based on the evidence before the court, 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 Les Schwab Tire Centers of California, Inc., Creditor, filed in this case by Emerson Lowell Schenk III, 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 2 of Les Schwab Tire Centers of California, Inc. is sustained, and the claim is disallowed in its entirety.

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7. 11-37718-C-13 OWEN/SUSAN BARBER MOTION TO MODIFY PLAN
DPC-1 Robert Fong 7-20-15 [54]

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 20, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on July 20, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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8. 15-25220-C-13 KI/DONG SEO — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 H. Jayne Ahn — 8-5-15 [17]

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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 August 5, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. The Plan fails to provide for the secured debt of BMW Financial Services on a 2011 BMW 535i Sedan. The vehicle is not disclosed in the Plan or schedules.

2. The SoFA is not properly filled out because it does not indicate the date of losses totaling $150,000.

The court has considered the Trustee's concerns and finds them legitimate. While treatment of a secured claim is not required under § 1325(a)(5), failure to do so may indicate that the debtor cannot afford the plan payments. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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9. 15-22524-C-13 CHARLES MEIGS MOTION TO CONFIRM PLAN
DBL-1 Bruce Dwiggins 7-27-15 [23]

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 27, 2015. Forty-two 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.

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

The Chapter 13 Trustee filed a lengthy statement of nonopposition.

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 July 27, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the

Chapter 13 Trustee will submit the proposed order to the court.

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10. 14-23926-C-13 DANIEL/MARY GUTTEREZ
PLC-6 Peter Cianchetta

MOTION FOR COMPENSATION FOR PETER L. CIANCHETTA, DEBTORS ATTORNEY(S)
7-22-15 [102]

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Final Ruling: No appearance at the September 1, 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, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 22, 2015. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Peter Cianchetta, the Attorney for Debtors, ("Applicant") for Daniel Gutterez and Mary Stella Gutterez, ("Clients"), makes an motion for attorney's fees in conjunction with the successful objection to Old Republic Insurance Company's untimely filed proof of claim. Dkt. 101.

Applicant requests fees in the amount of $1,800 and costs in the amount of $0, for an aggregate of $1,800 for the period of April 28, 2015 to July 22, 2015.

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 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 related to the estate enforcing rights and obtaining benefits. The

court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Peter Cianchetta bills time at $350.00 per hour. As stated in the Declaration of Peter Cianchetta, this rate is reasonable based on the time of being a lawyer and the knowledge and experience associated with the cases for which he has been involved. The rate is consistent with similar attorney's in the Sacramento region with similar experience.

Peter Cianchetta spent approximately 9.1 hours at a total cost of $3,191.00 at $350.00 but discounted the fee by $1,291.00 related to the Objection to the Proof of Claim filed by Old Republic Insurance Company:

Task	**Hours**	**Cost**
Research anti-deficiency statutes	1.70	$595
Client meeting on strategy	.5	$175
Prepare objection and motion	2.1	$735
Hearing preparation	1.1	$385
Attend hearing(incl. travel)	1.5	$525
Prepare fee application	2.2	$770
Mailing costs		$ 6
Subtotal	9.1	$3,191
Discount		($1,391)
Total		**$1,800**

This Court granted the Debtor's Objection to Claim. As such, Debtor was the prevailing party. Based on the contractual attorney's fees in this case and the reasonableness of the attorney's fees, Debtor requests the Court grant judgment in his favor for the total sum of $1,800.00 in legal fees as the prevailing party in this action.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $1,800

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Cianchetta (“Applicant”), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Ciancetta is allowed the fees in the amount of $1,800 as a professional of the Estate.

****

11. 15-25134-C-13 DONCHELE SOPER — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Anthony Hughes — 8-5-15 [18]

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 5, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtors Schedule I (dkt. 1, p. 27) lists retirement loan payments of $217.58. Debtor testified and the first meeting of creditors that the loan will be paid off within the term of the plan. The plan payments doe not increase after the loan is repaid.

The court has considered the Trustee's concern and find it to be legitimate. The failure of the plan payments to increase after repayment of the loan indicates that the Plan is not the Debtor's best effort under § 1325(b). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

****

12. 14-31437-C-13 GARY DUERNER MOTION TO MODIFY PLAN
GDD-5 Pro Se 7-28-15 [92]

****

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on July 28, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

****

13. 15-25438-C-13 LISA ORTIZ — OBJECTION TO DISCHARGE BY DAVID P. CUSICK
DPC-1 Lucas Garcia — 7-23-15 [15]

****

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2015. 28 days' notice is required. That requirement was met.

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

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtor is not eligible to receive a discharge because Debtor received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtor received a Chapter 7 discharge on April 7, 2015 (Case No. 14-32230). Debtor filed this Chapter 13 case on July 7, 2015.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not entitled to a discharge in this Chapter 13 case because Debtor received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

Findings of Fact and Conclusions of Law are stated in the Civil

Minutes for the hearing.

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-25438.

****

14. 14-32339-C-13 SHANNON BUELNA MOTION TO MODIFY PLAN
CYB-1 Candace Brooks 7-9-15 [19]

****

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on July 9, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

****

15. 15-25347-C-13 DIANNE/ALAN DREVER — MOTION TO VALUE COLLATERAL OF PATELCO CREDIT UNION
HDR-1 Harry Roth
7-29-15 [19]

****

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 29, 2015. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Patelco Credit Union, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 922 McKinley Avenue, Woodland, California. The Debtor seeks to value the property at a fair market value of $450,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $458,456.67. Patelco Credit Union's second deed of trust secures a loan with a balance of approximately $130,634.77. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Patelco Credit Union secured by a second deed of trust recorded against the real property commonly known as 922 McKinley Avenue, Woodland, 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 and is encumbered by senior liens securing claims which exceed the value of the Property.

****

16. 14-21767-C-13 CLAYTON GROSSMAN
14-2140 DMA-3
BLACK V. GROSSMAN

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BRANDY BLACK AND/OR MOTION FOR ENTRY OF STIPULATED JUDGMENT
8-4-15 [55]

Final Ruling: No appearance at the September 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 4, 2015. 28 days' notice is required. This requirement was met.

The Motion For Approval of Compromise 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 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 For Approval of Compromise is granted.

Clayton Grossman, the Chapter 13 Debtor and Defendant in adversary dispute, Adversary Case No. 14-02140, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Brandy Black, Plaintiff in adversary dispute, Adversary Case No. 14-02140 ("Settlor").

A Superior Court case in its infancy on the petition date ended with the entry of a judgment in the amount of $25,000 on February 20, 2015. Because the judgment entered by the Superior Court only provided that each party would bear its own prejudgment costs, but was otherwise silent as to findings or conclusions that could be applicable to bankruptcy dischargeability, the parties disagreed as to whether the judgment should be included in, or excluded excepted from, defendant's anticipated discharge.

Subsequently, in the interests of judicial economy, the parties reached a compromise which has been reduced to a settlement agreement(the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit in support of the Motion, Dckt. 58):

a. A stipulated judgment shall enter in the amount of $25,000;

b. The judgment shall be deemed to be non-dischargeable and non-modifiable;

c. The judgment shall be satisfied in full by defendant's payments totaling $17,000 to plaintiff via plaintiff's counsel, completed within three (3) years of entry of the stipulated judgment requested by this Motion. Said payments shall initially be via disbursement by the chapter 13 trustee, of dividends pursuant to plaintiff-creditor's allowed unsecured claim; after defendant completes his Plan payments, the remaining balance of the $17,000 required to satisfy the judgment shall be paid in monthly installments, due by the 25th of each month in an amount not less than $550 per month;

d. No interest shall accrue and each party will bear their own costs;

e. Only in the event of a default by the defendant, shall the stipulated settlement ($17,000) revert to the face value of the judgment ($25,000). Further, in the event of a default in the monthly payments, Plaintiff will give a notice to cure the default within 5 days to counsel for the debtor, David M. Alden at the Alden Law Group, via facsimile. If the default is not cured within 5 days, then the stipulated judgment shall revert to the face value of the judgment ($25,000) minus credits for payments made.

f. In the event of a default, plaintiff may charge interest at the legal rate on the outstanding balance after crediting payments received; and plaintiff shall be entitled to enforce the judgment without further order by the bankruptcy court;

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

While the defendant has factual and legal arguments supporting his defense, he acknowledges that the outcome of a trial is uncertain. Further, the defendant has limited means to satisfy a judgment or to conduct his defense. For this reason, the defendant believes that it is prudent for him to stipulate to a compromise, effectively buying certainty, within his financial ability to perform.

Difficulties in Collection

The settlement does not relieve the plaintiff of the potential difficulties associated with collection. But the settlement gives the defendant a strong incentive to avoid default, thereby reducing plaintiff's exposure.

Complexity of Litigation

Three distinct legal theories have been pleaded. Each presents its own factual and legal challenges. One of the theories is based on a relatively new statutory provision, which has yet to be fully explored at the appellate level. Forensic examination of digital evidence and expert testimony as to damages could be required. Defendant believes and asserts that the potential costs of trial, including expert witnesses, would exceed the amount of the proposed settlement and is not in the best interests of himself, the plaintiff, the estate or any of its creditors.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Compromise filed by Clayton Grossman, the Chapter 13 Debtor and Defendant in adversary dispute, Adversary Case No. 14-02140, ("Movant") 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 Approve Compromise between Movant and Brandy Black ("Settlor") is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Docket Number 58).

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17. 15-26270-C-13 ALEJANDRO REYES
RJ-2 Richard Jare
Thru #19

MOTION TO VALUE COLLATERAL OF PARTNERS FOR PAYMENT RELIEF, LLC
8-18-15 [12]

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Partners for Payment Relief, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1173 Weber Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of $340,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $430,200. Partners for Payment Relief's second deed of trust secures a loan with a balance of approximately $56,282. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer*

v. PSB Lending Corp. (In re Zimmer), 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Partners for Payment Relief secured by a second deed of trust recorded against the real property commonly known as 1173 Weber Way, 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 $340,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

****

18. 15-26270-C-13 ALEJANDRO REYES
RJ-3 Richard Jare

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA INC.
8-19-15 [20]

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Santander Consumer USA Inc. ("Creditor") is granted and the secured claim is determined to have a value of $4,300.

The Motion filed by Alejandro Jose Reyes ("Debtor") to value the secured claim of Santander Consumer USA Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Nissan Sentra ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $4,300 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 December of 2009, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,000. Therefore, the Creditor's claim secured by a lien on

the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $4,300. *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 Alejandro Jose Reyes ("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 Santander Consumer USA Inc. ("Creditor") secured by an asset described as a 2008 Nissan Sentra ("Vehicle") is determined to be a secured claim in the amount of $4,300, 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 $4,300 and is encumbered by liens securing claims which exceed the value of the asset.

****

19. 15-26270-C-13 ALEJANDRO REYES
RJ-4 Richard Jare

MOTION TO VALUE COLLATERAL OF CAR FINANCE CAPITAL (LLC)
8-19-15 [16]

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Car Finance Capital LLC ("Creditor") is granted and the secured claim is determined to have a value of $8,000.

The Motion filed by Alejandro Jose Reyes ("Debtor") to value the secured claim of Car Finance Capital LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Mercedes ML500 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,000. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined

to be in the amount of $8,000. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Alejandro Jose Reyes ("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 Car Finance Capital LLC ("Creditor") secured by an asset described as a 2004 Mercedes ML500 ("Vehicle") is determined to be a secured claim in the amount of $8,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,000 and is encumbered by liens securing claims which exceed the value of the asset.

****

20. 15-25172-C-13 MET-1 | ERIC/CLEOFE PRICE
Mary Ellen Terranella | MOTION TO VALUE COLLATERAL OF CALIFORNIA REPUBLIC BANK AUTO FINANCE
8-5-15 [18]

Thru #22

****

Final Ruling: No appearance at the September 1, 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 Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 5, 2015. 14 days' notice is required. This requirement was met.

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 California Republic Bank Auto Finance ("Creditor") is continued to September 15, 2015 at 2:00 p.m.

Due to scheduling conflicts, the judge to whom this case is assigned continues the hearing to September 15, 2015. The court has posted a tentative ruling for the September 1, 2015 hearing to afford counsel and Debtors the opportunity to consider the issues presented to the court. In continuing the hearing, the court orders that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Motion.

TENTATIVE

The Motion filed by Eric Raymond Price and Cleofe Castro Price ("Debtor") to value the secured claim of California Republic Bank Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Ford F150 Pickup ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $24,600.00 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 April 12, 2013, which is less than 910 days prior to filing of the petition.

The remaining balance of the loan as of the date of filing was approximately $28,267. Movant is requesting that the loan held by Creditor be determined to be secured in the amount of $24,600, the replacement value of the vehicle, as may be permitted by the set off of the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of $3,869, and that the remaining balance be determined an unsecured claim.

DISCUSSION

The Creditor filed a Proof of Claim No. 3 on July 6, 2015, claiming a secured claim in the amount of $28,267.41. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 3 and as an exhibit to the instant motion, Dckt. 20, shows that the total amount financed by the Movant was $34,769.77. There was a net trade-in of <-$3,869>. Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in vehicle, and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 11.1% of the amount financed and the remaining 88.9% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 2, $3,137.68 of the amount financed is to the negative net equity from the trade-in. The remaining $25,129.73 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant may only value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

The creditor's secured claim is determined to be in the amount of $25,129.73. *See* 11 U.S.C. § 506(a). The remaining $3,137.68 is determined to be a general unsecured claim arising from the negative equity from the trade-in. 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 Eric Raymond Price and Cleofe Castro Price ("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 continued to September 9, 2015 at 10:00 a.m.
>
> **IT IS FURTHER ORDERED** that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Motion.

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21. 15-25172-C-13 ERIC/CLEOFE PRICE — MOTION TO VALUE COLLATERAL OF INFINITI FINANCIAL SERVICES
MET-2 Mary Ellen Terranella — 8-5-15 [23]

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Final Ruling: No appearance at the September 1, 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 Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 5, 2015. 14 days' notice is required. This requirement was met.

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.

The Motion to Value secured claim of Infiniti Financial Services ("Creditor") is continued to September 15, 2015 at 2:00 p.m.

Due to scheduling conflicts, the judge to whom this case is assigned continues the hearing to September 9, 2015. The court has posted a tentative ruling for the September 1, 2015 hearing to afford counsel and Debtors the opportunity to consider the issues presented to the court. In continuing the hearing, the court orders that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Motion.

TENTATIVE

The Motion filed by Eric Raymond Price and Cleofe Castro Price ("Debtor") to value the secured claim of Infiniti Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Infiniti EX37 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $40,170.00 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 October 28, 2013, which is less than 910 days prior to filing of the petition.

The remaining balance of the loan as of the date of filing was approximately $47,185.00. Movant is requesting that the loan held by Creditor be determined to be secured in the amount of $40,170, the replacement value of the vehicle, as may be permitted by the set off of the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of $11,401.00, and that the remaining balance be determined an unsecured claim.

DISCUSSION

The Creditor filed a Proof of Claim No. 2 on July 6, 2015, claiming a secured claim in the amount of $46,981.57. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 2 and as an exhibit to the instant motion, Dckt. 26, shows that the total amount financed by the Movant was $52,267.40. There was a net trade-in of <-$11,401>.

Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in vehicle, and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 21.8% of the amount financed and the remaining 78.2% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 2, $10,241.98 of the amount financed is to the negative net equity from the trade-in. The remaining $36,739.59 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant may only value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

Finally, 11 U.S.C. § 506(a) permits that a secured claim of a creditor may be bifurcated, and that the appropriate measure of the secured claim is the replacement value of the property. 11 U.S.C. § 506(a)(2). Thus, while the negative equity arising from the trade-in at 21.8% results in $36,739.59 as the amount loaned to secure the purchase of the vehicle, the creditor's secured claim cannot be determined to be below the replacement value of the Vehicle, which Debtors aver to be $40,170.

The creditor's secured claim is determined to be in the amount of $40,170. *See* 11 U.S.C. § 506(a). The remaining $6,811.57 is determined to be a general unsecured claim arising from the negative equity from the trade-in. 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 Eric Raymond Price and Cleofe Castro Price ("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 continued to September 15, 2015 at 2:00 p.m.
>
> **IT IS FURTHER ORDERED** that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Motion.

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22. 15-25172-C-13 DPC-1 | ERIC/CLEOFE PRICE
Mary Ellen Terranella | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-31-15 [14]

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Final Ruling: No appearance at the September 1, 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 Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on August 5, 2015. 14 days' notice is required. This requirement was met.

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.

The court's decision is to continue the Objection to September 15, 2015 at 2:00 p.m.

Due to scheduling conflicts, the judge to whom this case is assigned continues the hearing to September 15, 2015. The court has posted a tentative ruling for the September 1, 2015 hearing to afford counsel and Debtors the opportunity to consider the issues presented to the court. In continuing the hearing, the court orders that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Objection.

TENTATIVE

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

1. Debtors misclassified California Republic Bank Auto Finance and Infiniti Financial Services in Class 2B of the plan. It does not appear either of these creditors qualify under Class 2B of the plan, and instead should be listed under Class 2A.

    a. Debtors had a prior case that was filed April 1, 2015 and dismissed on June 26, 2015, Case No. 15-22702. Infiniti Financial Services filed an Objection to Confirmation, Dckt. Control No. APN-1 in Debtors' prior case. The objection as sustained by the court at the hearing held May 7, 2015. Debtors' plan filed April 1, 2015 in the prior case lists California Republic in Class 2B. It is unclear why Debtors again list California Republic in Class 2B. The creditor filed a claim on July 6, 2015, Claim No. 3, which lists the date of financing was on April 12, 2013 for a 2013 Ford. Thus, California Republic should not be in Class 2B of the current case.

    b. Infiniti Financial Services should not be listed in Class 2B. The creditor filed a claim on July 6, 2015, Claim No. 2, where it appears the installment sale contract as to a 2013 Infiniti EX37 was signed by Cleofe Price on October 28, 2013.

2. The plan does not appear to provide for all of Debtors' projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). Debtors are below median income proposing to pay $1,315 per month for 60 months with 0% guaranteed dividend to general unsecured claims. On July 21, 2015, Trustee received copies of Debtors' paystubs for their 2014 tax returns. A review revealed that Debtors received significant refunds–$3,592 from the Internal Revenue Service, and $694 from the Franchise Tax Board. Debtors report on their schedule I that their average net income is $6,168 per month. If Debtor factors in their tax refunds, they would have an estimated additional $357.17 per month. Trustee requests that Debtors amend their plan to propose any future tax refunds be paid into the plan as an additional payment toward unsecured claims.

The Trustee's concerns are well-taken. While the court has granted Debtors' Motions to Value the Collateral of the two creditor claims, those of California Republic and Infiniti Financial Services, on the basis of negative equity in the vehicles, Debtors must make the necessary adjustments to the plan to reflect the amounts determined to be secured. Additionally, the court shares Trustee's concerns that Debtors have not accounted for their whole disposable 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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is continued to September 15, 2015 at 2:00 p.m.
>
> **IT IS FURTHER ORDERED** that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Objection.

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23.	15-24876-C-13 DPC-1	CARMEN HERNANDEZ Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-31-15 [21]

****

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 31, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not appear at the First Meeting of Creditors on July 30, 2015. The Meeting was continued to September 24, 2015. Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect of 11 U.S.C. § 1325.

2. Debtor does not appear to be able to make payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent $100. To date, Trustee has not received any plan payments from Debtors where one payment has be come due.

3. Debtor has not provided Trustee with a tax transcript or copy of federal income tax return. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors.

4. Debtor cannot make payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor reports mortgage arrears owed to Wells Fargo Bank totaling $10,749.74 but fails to propose a monthly dividend. Debtor also fails to propose ongoing mortgage payments.

5. Debtor's plan may not comply with applicable law, 11 U.S.C. § 1325(a)(1). The plan does not provide a dividend to unsecured creditors, it does not state 0% but leaves the dividend blank, thus failing to designate treatment for claims of a particular class under 11 U.S.C. § 1322)(a)(3).

6. Trustee is unable to determine whether Debtor can make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). Trustee is unable to determine feasibility of the plan, and Debtor's schedule I shows at least a portion of Debtors income is from daughter's contribution. However Debtor has failed to provide a declaration to prove these contributions are likely to occur.

7. Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

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

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

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

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24. 15-25088-C-13 DENISE LYNGSTAD
DPC-1 Lucas Garcia

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-31-15 [27]

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Final Ruling: No appearance at the September 1, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation, 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.**

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25. 15-25188-C-13 KATHY ASHLEY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Richard Jare — 7-31-15 [18]

****

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 31, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

2. Debtor did not appear at the First Meeting of Creditors held on July 30, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

3. The Plan does not account for IRS claim #1, a priority tax debt in the amount of $3,784.04.

4. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

Debtor's Opposition

Debtor states that she was not informed of the 341 meeting, but she will appear at the continued meeting. Debtor states that she has provided the Trustee with needed documents.

Discussion

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

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

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

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26.	11-38791-C-13 BLG-6	GORDON/MARGARET LOMAX Chad Johnson	MOTION FOR COMPENSATION FOR CHAD M. JOHNSON, DEBTORS ATTORNEY(S) 8-3-15 [112]

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Final Ruling: No appearance at the September 1, 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, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 21, 2015. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Bankruptcy Law Group, PC, the Attorney for Debtors, ("Applicant"), makes an Second Request for the Allowance of Fees and Expenses in this case.

Applicant requests additional fees in the amount of $700.00 and costs in the amount of $58.59.Since the last Motion for Compensation filed on August 13, 2012, Bankruptcy Law Group has been required to complete a significant amount of additional work--including a motion to modify plan--as necessitated by unforeseeable circumstances. It was unanticipated when the debtor's filed their Chapter 13 that debtor would retire while still in the Chapter 13 Plan. Furthermore, it was unanticipated that debtors would have changes to their household expenses.

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 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 related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

After exercising reasonable billing judgment, the total number of hours expended in this case for which applicant seeks compensation is 4.8. The hourly rates at the client retained are as follows: Attorneys $300/hr; Paralegals $135/hr. Total Additional billed and no-charged Hours requested are 4.8 and break down as follows: Attorneys 1.8 hrs; Paralegals 3.0 hrs; Administrative Staff 0.0 hrs. Of the 4.8 hours, 1.7 are no-charged and 3.1 were billed.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$700
Costs	$58.59

The Chapter 13 Trustee filed a statement of nonopposition.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Bankruptcy Law Group, PC ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Bankruptcy Law Group, PC is allowed the fees in the amount of $700.00 and costs in the amount of $58.59 as a professional of the Estate.

****

27. 15-24192-C-13 ERIC FRANCOIS
AMC-1 Richard Jare

OBJECTION TO CONFIRMATION OF PLAN BY CENTRAL MORTGAGE COMPANY
7-23-15 [29]

****

Final Ruling: No appearance at the September 1, 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, and Office of the United States Trustee on July 23, 2015. Twenty-eight days' notice is required.

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

The court's decision is to sustain the Objection.

Central Mortgage Company opposes confirmation of the Plan on the basis that the Plan proposes a loan modification and Debtor is not a borrower on the Note at issue and does not hold record title to the subject property. Moreover, no requests for a loan modification have been submitted since the petition was filed. As such, it appears that the bankruptcy and the proposed plan were not filed in good faith. Rather, they were filed to delay and hinder Central Mortgage's right to foreclose. As such, the Debtor's proposed Chapter 13 Plan should be denied and the bankruptcy case should be dismissed. (See 11 U.S.C. §1325(a)(3)(7).)

Sheila Francois has since told Central Mortgage that the Property was transferred to Ms. Times to save the Property from foreclosure after she ran into problems paying the mortgage. (Oakley Dec., ¶ 7.)

On July 27, 2006, Ms. Times executed a Grant Deed transferring the Property to herself and Sheila Francois as joint tenants. Mr. Francois is not referenced in the Grant Deed as a person who holds an interest in the Property. (Oakley Dec., ¶ 8 and Exhibit D.)

The Debtor's wife, Sheila Francois, was added to the Note as a co-borrower by way of an Assumption Agreement dated January 1, 2008. On July 3, 2009, Ms. Times and Sheila Francois obtained a loan modification. Debtor was not a party to the Assumption Agreement or the Loan Modification Agreement. Moreover, the Debtor is not referenced in any of the documents relating to the loan modification request. (Oakley Dec., ¶ 9, Exhibit E and Exhibit F.)

The subject loan went into default on February 1, 2014. A Notice of

Default was recorded on September 3, 2014, in the Solano County Recorder's office as Instrument No. 201400066730. (Oakley Dec. ¶ 11 and Exhibit H.)

On January 22, 2015, Sheila Francois filed for Chapter 13 Bankruptcy protection in the U.S. Bankruptcy Court, Eastern District of California, Case No. 15- 20434. The case was dismissed by the Court on February 20, 2015. (Oakley Dec., ¶ 12 and Exhibit I.)

On March 19, 2015, after Sheila Francois' first bankruptcy case was dismissed, Ms. Times and Sheila Francois conveyed their interest in the Property to Silverstein & Wolf Corp. as evidenced by the Warranty Deed recorded in the Solano County Recorder's office as Instrument No. 01500022172. (Oakley Dec., ¶ 13 and Exhibit J.)

On March 23, 2015, Sheila Francois filed a second Chapter 13 Bankruptcy Petition in the U.S. Bankruptcy Court, Eastern District of California, Case No. 15-22278. This case was dismissed by the Court on April 20, 2015. (Oakley Dec. ¶ 14 and Exhibit K.)

On or about May 26, 2015, the Debtor filed a Chapter 13 bankruptcy petition (DOC 1). On June 23, 2015, Debtor filed his proposed Chapter 13 Plan (DOC 23). The proposed Chapter 13 Plan identifies the debt owed to Central Mortgage as a Class 1 claim.

The Debtor does not have an interest in the Property which was conveyed by Ms. Times and Sheila Francois to Silverstein & Wolf Corp. on March 19, 2015. (Oakley Dec., ¶ 13 and Exhibit J.

Even if we assume the Debtor has an interest in the Property (an issue which is clearly in dispute), the Debtor's proposed Chapter 13 Plan cannot be confirmed. First, the Debtor is not a borrower on the Note. More importantly, Ms. Times and Sheila Francois (the borrowers) have not submitted a request for a loan modification to Central Mortgage. Finally, the proposed adequate protection payments are insufficient as they account for less than half of the monthly mortgage payment due beginning August 1, 2015, which is $3,298.00. (Oakley Dec. ¶ 17.)

Discussion

Debtor's Chapter 13 Plan was not proposed in good faith in violation of 11 U.S. C. §1325(3)(7). The Debtor is not a party to the Note and does not have a recorded interest in the Property. He filed bankruptcy after two prior bankruptcy petitions filed by his wife, Sheila Francois, were dismissed by this Court.

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 Central Mortgage Company 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.

****

28. 15-23593-C-13 SANSONIA WRIGHT MOTION FOR CONTEMPT
SJS-1 Scott Sagaria 7-17-15 [18]

****

Final Ruling: No appearance at the September 1, 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 the United States Trustee; the Chapter 13 Trustee; Capital One, National Association; all creditors; and all other parties in interest on July 17, 2015. 28 days' notice is required.

The Motion for Damages for Violation of the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 matter to September 15, 2015 at 2:00 p.m.

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Susan Wright, the Chapter 13 Debtor, ("Movant"). The Claims are asserted against Capital One, N.A. ("Respondent").

LEGAL STANDARD

A request for an order of contempt by the Debtor, United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to wilful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, 946, (9th Cir. 2009).

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its

lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy judge is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

Attorneys' fees may only be recovered for work involved in bringing about an end to the stay violation, not for pursuing an award of damages. *Sternberg v. Johnston*, *id.*, 947-48 (9th Cir. 2011) ("[P]roven injury is the injury resulting from the stay violation itself. Once the violation has ended, any fees the debtor incurs after that point in pursuit of a damage award would not be to compensate for 'actual damages' under § 362(k)(1)."), *cert. denied*, 2011 U.S. LEXIS 6502 (2011). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

REVIEW OF MOTION

Grounds Asserted in the Motion

In asserting this claim pursuant to 11 U.S.C. § 362(k), Movant states with particularity (Fed. R. Bankr. P. 9013) the following grounds and relief:

A. On April 30th, 2015 Debtor filed a voluntary Chapter 13 bankruptcy petition.

B. Capital One, National Association (hereinafter "Creditor") was listed in Schedule F of the petition as a pre-petition unsecured debt.

C. Pacer indicates the Bankruptcy Noticing Center sent Creditor notice of the bankruptcy petition on May 12th, 2015. Exhibit "A".

D. On June 17th, 2015, Creditor sent debtor a collection notice with a balance of $570.72. due immediately. This is a pre-petition debt that was included in debtors Chapter 13 bankruptcy. Exhibit "B".

E. On June 17th, 2015, Creditor sent debtor a collection notice with a balance of $1,069.69 due immediately. This is a pre-petition debt that was included in debtors Chapter 13 bankruptcy. Exhibit "C".

Debtor prays for:

1. An Order holding Creditors in civil contempt;

2. An award of compensatory damages in the amount of $2,000;

3. Awards of mild deterrent sanctions not to exceed $3,000;

4. An award of the reasonable attorney's fees and costs necessary to prosecute the motion;

5. Such other equitable relief as may be warranted in the interests of justice.

DISCUSSION AND RULING

The court will continue the matter to September 15, 2015 at 2:00 p.m. to evaluate the evidence.

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 Damages for Violation of the Automatic Stay by Susan Wright, "Movant," 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 to September 15, 2015 at 2:00 p.m.