UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 19, 2017 at 1:00 p.m.

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1. 17-23400-B-13 JPJ-1 **Thru #2** — ANTHONY/LEETA HIGHTOWER, Gerald B. Glazer — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, 7-26-17 [18]

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

The court's decision is to overrule the objection and confirm the plan provided that Debtors give proper notice to all creditors of the increased dividend from 0% to approximately 69%.

This matter was continued from September 19, 2017, to allow the Debtor to file a response and the Trustee to file any reply.

The Debtors filed a response to the Trustee's objection and agree to pay an additional $532.52 per month into their plan after accounting for the improper expenses at Lines #9b and #17 of the Calculation of Disposable Income (Form 122C-2). This means that the Debtors must pay no less than $31,951.20 to their unsecured, non-priority creditors.

In reply, the Trustee states that the increased payment resolves the Trustee's concerns but also requests that the Debtors provide proper notice to all creditors regarding the increase in dividend.

Debtors shall provide all creditors with notice of increased payment and file certification of notice by September 26, 2017. No confirmation order shall be approved or submitted for approval until after October 10, 2017.

Provided that all creditors receive proper notice of the increased dividend, the plan filed May 31, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

2. 17-23400-B-13 MJ-1 — ANTHONY/LEETA HIGHTOWER, Gerald B. Glazer — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF THE WEST, 7-27-17 [22]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local

Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

This matter was continued from September 19, 2017, to allow the Debtor to file a response and Bank of the West to file any reply.

Objecting creditor Bank of the West, by and through its servicing agent Bank of America, N.A., holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $103,063.85 in pre-petition arrearages.

The Debtors have filed a response stating that they are willing to increase their plan payment by $532.52 per month as requested by the Trustee and that this will pay the arrearages of $103,063.85 in full.

The creditors have not filed an objection to the Debtors' proposal.

Because the plan with increased payment by $532.52 will provide for the full payment of arrearages, the plan is confirmable. The plan filed May 31, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

3. 17-24214-B-13 SHAUN O'DONNELL
JPJ-1 Stephen M. Reynolds

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-10-17 [20]

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

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

This matter was continued from September 5, 2017, to allow the Debtor to file a declaration by September 12, 2017, from his listing agent as to the sale of Debtor's residence. A review of the court's docket shows that a declaration has not yet been filed as of September 18, 2017.

The proposed plan calls for the sale of Debtor's residence by February 1, 2018. However, there is no evidence that the Debtor will be able to sell the property by the deadline, that the Debtor has hired a real estate agent to sell the property, or that the property is even listed for sale. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed July 10, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

4.	16-28129-B-13 JPJ-1	JERRY/JOANNE BENNETT Stephen N. Murphy	OBJECTION TO CLAIM OF BLUE RIDGE FAMILY DENTAL C/O CHAPTER HOLDINGS, CLAIM NUMBER 24 8-4-17 [176]

Final Ruling: No appearance at the September 19, 2017, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 24 of Blue Ridge Family Dental c/o Chapter Holdings and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Blue Ridge Family Dental c/o Chapter Holdings ("Creditor"), Proof of Claim No. 24 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of $6,006.34. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was April 19, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 49. The Creditor's Proof of Claim was filed April 20, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

5. 17-23435-B-13 RYAN GRIMES MOTION TO CONFIRM PLAN
JDM-1 John David Maxey 8-8-17 [24]

Final Ruling: No appearance at the September 19, 2017, hearing is required.

Debtor's Motion to Confirm Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on August 8, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

6. 17-24252-B-13 CHERYL HANSEN
DWE-1 Scott D. Shumaker

OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC
7-27-17 [47]

DEBTOR DISMISSED: 08/08/2017

Final Ruling: No appearance at the September 19, 2017, hearing is required.

The case having been dismissed on August 8, 2017, the objection is overruled as moot.

The court will enter an appropriate minute order.

7. 16-20564-B-13 KATRINA NOPEL — MOTION TO MODIFY PLAN
PLC-5 Peter L. Cianchetta — 8-3-17 [70]

Final Ruling: No appearance at the September 19, 2017, hearing is required.

The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days' 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 filed on August 3, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

8. 12-38976-B-13 DAVID TAM AND WENXIA GUO — MOTION TO EXTEND DEADLINES IN SCHEDULING ORDER
17-2045 FF-1 — 8-14-17 [17]
TAM ET AL V. WELLS FARGO BANK, N.A.

Final Ruling: No appearance at the September 19, 2017, hearing is required.

The Motion to Extend Deadlines in Scheduling Order has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-BuTrk (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 grant the motion to extend the deadlines in the scheduling order.

The court issued a scheduling order on June 7, 2017. David Tam and Wenxia Guo ("Plaintiffs") propounded discovery on Wells Fargo Bank, N.A. ("Defendants") in the form of production of documents with proof of service dated on June 5, 2017. Plaintiffs and Defendants have engaged in extensive correspondence with Plaintiffs actively attempting to move discovery along but to no avail. *See* dkt. 19, exh. D. As of the date of the filing of this motion, Defendant is over one and a half months late in providing the documents requested.

Plaintiffs request that the deadlines be modified as follows:

	Current deadline	Requested deadline
Pretrial conference	1/16/18	3/13/18
Designation of experts	11/1/17	1/01/18
Close of discovery	12/15/17	2/15/18
Dispositive motions	12/08/17	2/08/18
Plaintiff pretrial statement	1/03/18	3/06/18
Defendant pretrial statement	1/09/18	3/12/18

Plaintiffs assert that these deadlines are also necessary to provide them enough time to review Defendant's anticipated production of 900 pages from a loan file and 5,000 pages in accounting records. The motion will be granted.

The court will enter an appropriate scheduling order.

9. 17-24480-B-13 RENEE MARTIN
Albert L. Boasberg

MOTION TO CONFIRM PLAN
8-4-17 [41]

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

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

First, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Second, Debtor's plan proposes an impermissible modification to Class 1 creditor Ocwen pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1). The plan does not specify an arrearage dividend for the Class 1 arrears, which is contrary to Section 2.08 of the form plan.

Third, the plan does not specify a minimum dividend to Class 7 general unsecured creditors pursuant to 11 U.S.C. § 1325(a)(1). The plan cannot be effectively administered since the plan is incomplete.

Fourth, the Debtor has not amended Line #27 of the Statement of Financial Affairs to show that she still has an open business as a licensed real estate agent. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

The court will enter an appropriate minute order.

10. 16-27483-B-13 RICHARD/GRACE HINDES
17-2075
HINDES ET AL V. BANK OF AMERICA, N.A. ET AL

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
6-19-17 [13]

Thru #11

11. 16-27483-B-13 RICHARD/GRACE HINDES
17-2075 PPR-2
HINDES ET AL V. BANK OF AMERICA, N.A. ET AL

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
7-27-17 [26]

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

The court's decision is to grant the motion.

This matter was continued from September 5, 2017, by stipulation between Richard Leroy Hindes and Grace Elizabeth Hindes ("Plaintiffs") and Wilmington Savings Fund Society FSB as trustee of Stanwich Mortgage Loan Trust C ("Wilmington") and Carrington Mortgage Services, LLC ("Carrington") (collectively, "Defendants"). The Plaintiffs had until September 5, 2017, to file a response to the Defendants' motion to dismiss and the Defendants had until September 12, 2017, to file a reply. Plaintiffs filed a response. No reply was filed by Defendants.

Before the court is a motion by Defendants to dismiss, dkt. 26, the first amended complaint that Plaintiffs filed on June 19, 2017.[1] Dkt. 13. The first amended complaint also names Bank of America ("BofA") as a defendant; however, BofA has not moved for dismissal. Therefore, court treats the present motion as one to dismiss Carrington and Wilmington as defendants in this adversary proceeding rather than one to dismiss the first amended complaint in its entirety. And for the reasons explained below, the motion will be granted.

Background

Plaintiffs filed a chapter 13 petition on November 10, 2016. When Plaintiffs filed their chapter 13 petition they were borrowers on a loan from BofA. BofA serviced and owned that loan.

BofA filed a proof of claim for that loan on December 22, 2016. That proof of claim is identified as Claim No. 3-1. The loan identified in the proof of claim, the accounting and allocation of payments and the loan balance stated in the proof of claim, and the proof of claim itself are the subjects of this adversary proceeding.[2]

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[1]The initial complaint that commenced this adversary proceeding was filed on May 5, 2017. Dkt. 1. That complaint and a motion to dismiss it were mooted by the subsequent filing of the first amended complaint on June 19, 2017. *See* Dkts. 25, 23.

[2]Plaintiffs confirmed a chapter 13 plan on January 10, 2017. The confirmed plan classified BofA as a Class 1 secured creditor.

Exhibit F to the first amended complaint reflects that Carrington became the servicer of the BofA loan on May 2, 2017. Wilmington filed a notice of appearance in parent bankruptcy case on June 6, 2017. And according to Plaintiffs, an assignment of the deed of trust to Wilmington was recorded with the Yolo County Recorder on June 29, 2017.

Legal Standard

Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6), incorporated by Fed. R. Bankr. P. 7012(b). "A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008); *accord Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

The Supreme Court has established the minimum requirements for pleading sufficient facts. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

In ruling on a Rule 12(b)(6) motion to dismiss, the court accepts all factual allegations as true and construes them, along with all reasonable inferences drawn from them, in the light most favorable to the non-moving party. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 33738 (9th Cir. 1996). The court need not, however, accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. "A pleading that offers labels and conclusions' or a formulaic recitation of the elements of a cause of action will not do.'" *Id.* (quoting *Twombly*, 550 U.S. at 555).

In addition to looking at the facts alleged in the complaint, the court may also consider some limited materials without converting the motion to dismiss into a motion for summary judgment under Rule 56. Such materials include (1) documents attached to the complaint as exhibits, (2) documents incorporated by reference in the complaint, and (3) matters properly subject to judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *accord Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curium) (citing *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1204 (C.D. Cal. 2004)). A document may be incorporated by reference, moreover, if the complaint makes extensive reference to the document or relies on the document as the basis of a claim. *Ritchie*, 342 F.3d at 908 (citation omitted).

Discussion

Plaintiffs allege that the proof of claim BofA filed in their chapter 13 case is improper in that it includes an improper and erroneous accounting and allocation of the Plaintiffs' loan payments and balance. The problem for the Plaintiffs, however, is that the claims in the first amended complaint are based on acts that allegedly occurred before Carrington and Wilmington acquired any interest in or rights to BofA loan.

Carrington did not become the loan servicer until May 2, 2017. And Wilmington apparently acquired ownership of the loan sometime between June 6, 2017, and June 29, 2017.

Inasmuch as the proof of claim was filed on December 22, 2016, anything related to the proof of claim, such as the proof of claim itself and the accounting and allocation of payments and the loan balance stated in the proof of claim, occurred well before the above-referenced May and June 2017 dates. Absent factual allegations that suggest some basis for successor, agency, or even an assumption of liability by Carrington and

Wilmington, which are not found anywhere in the first amended complaint, neither Carrington nor Wilmington can be held liable for any of the claims alleged in the first amended complaint. In other words, neither can be held liable for harm they did not cause the Plaintiffs and, as a practical matter, for harm that occurred well before both had any interest in the Plaintiffs' loan. Likewise, neither are obligated - affirmatively or otherwise - to any such harm for the Plaintiffs.

The same is true with respect to post-confirmation payments, and the accounting and allocation associated with those payments, disbursed by the Chapter 13 Trustee ("Trustee") before the initial complaint was filed. The last post-confirmation payment that would have been disbursed by the Trustee before May 5, 2017, would have been for the month ending April 2017. At that point, BofA still owned and serviced the Plaintiffs' loan. Moreover, according to Exhibit F, the April 2017 payment went to BofA and not Carrington or Wilmington.

The point is that all of the conduct complained of in the first amended complaint, and thus the acts upon which all of the claims in the first amended complaint are purportedly based, occurred before Carrington and Wilmington acquired any interest in or rights to the Plaintiffs' BofA loan. As already stated, neither Carrington nor Wilmington are (or can be held) liable for past harm allegedly caused by BofA and neither have an obligation to fix whatever harm or damage, if any, that BofA caused the Plaintiffs while it owned the Plaintiffs' loan. That applies even if, as is apparent, Carrington and Wilmington know of the acts by BofA the Plaintiffs allege caused harm. Liability, if any, rests with BofA.[3]

Conclusion

In sum, the first amended complaint fails to state any claim against Carrington and Wilmington on which relief may be granted. Therefore, Defendants motion will be granted and Carrington and Wilmington will be dismissed as defendants from this adversary proceeding without prejudice.

Plaintiffs will have 14 days from the entry of the order granting the present motion to file and serve a second amended complaint that may include Carrington and Wilmington as defendants if there is a good faith basis for doing so. If an amended complaint is not timely filed and served, this dismissal without prejudice will become a dismissal with prejudice as to Carrington and Wilmington.

The status conference at Item #10 will be continued for 30 days.

The court will enter an appropriate minute order for both matters.

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[3]The court is aware that first amended complaint alleges that "[a]t this stage of the pleadings, it is unclear on [sic] who is responsible for the conduct pled among the Defendants." Dkt. 13, ¶ 48 at 8:2-3. If that's the case then the question becomes whether the first amended complaint is essentially (and substantively) a "Doe" complaint. "Courts in the Ninth Circuit have recognized that generally, Doe pleading is improper in federal court and is disfavored." *California ex rel. Ingenito v. U.S. Army*, 91 F. Supp. 3d 1185, 1189 (E.D. Cal. 2015) (internal citations and quotations omitted). And if so, perhaps that may be an independent basis for the first amended complaint to be dismissed as to all defendants. *In re Halloum*, 2015 WL 5095340, *3 (Bankr. E.D. Cal. 2015) (Klein, J.) ("Doe pleading is not recognized in federal practice. The Doe defendants are being dismissed."). However, the court need not reach this issue at this juncture because dismissal is appropriate on other grounds and leave to amend will be granted.

12. 13-32286-B-13 MARCOS SMITH
WW-3 Mark A. Wolff

CONTINUED OBJECTION TO CLAIM OF VICTOR CORREIA, CLAIM NUMBER 6-1
6-1-17 [80]

Tentative Ruling: The Objection to Claim of Victor Correia, Claim Number 6-1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. 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.

The matter will be determined at the scheduled hearing.

This matter was continued from July 17, 2017, again from August 15, 2017, and again from September 9, 2017, given representation at the hearing in open court by Debtor's attorney that the Debtor and creditor Victor Correia ("Creditor") are working on a settlement agreement. Absent a resolution, the objection will be sustained.

Debtor requests that the court disallow the claim of Creditor, Claim No. 6-1. The claim is asserted to be in the amount of $22,785.53. Objector asserts that the claim was paid through the plan of his prior bankruptcy case (no. 08-26780) and that Creditor received a sum of $20,185.53. Objector believes that a balance of only $4,409.47 is due and requests that the claim be disallowed to the extent is exceeds $12,158.96 and that all the funds in excess of this be paid to the Chapter 13 Trustee.

Responses

Responses were filed by both the Chapter 13 Trustee and Creditor.

Chapter 13 Trustee Jan Johnson asserts that the deadline to file an objection to the Notice of Filed Claims has passed. Pursuant to Local Bankr. R. 3007-1(d)(3), objections to claims shall be filed no later than 60 days after service of the Notice of Filed Claims. In this case, more than three years have passed. Pursuant to Local Bankr. R. 3007-1(d)(4), any objection filed after the 60 day period, if sustained, shall not result in any order that the claimant refund amounts paid on account of its claim. The Trustee has already paid Creditor $22,000.00 and opposes the Objector's request to the extent it would require Creditor to refund any of this amount to the Trustee.

Creditor has filed a response reiterating the Trustee's assertion that the deadline to file an objection to the Notice of Flied Claims has expired pursuant to Local Bankr. R. 3007-1(d)(3). Creditor also states that the amount claimed in Claim No. 6-1 is correct and is comprised of $12,158.96 in pre-petition claims and new attorneys fees and costs incurred from this second bankruptcy case, the filing of a second adversary proceeding, and in negotiating a settlement agreement.

13. 16-22090-B-13 JOSHUA/MARILYN JOHNSON
CYB-4 Candace Y. Brooks

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
7-11-17 [62]

Tentative Ruling: The Objection to Notice of Mortgage Payment Change Filed March 2, 2017, by Wells Fargo Bank, N.A. has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. 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.

The matter will be determined at the scheduled hearing.

This matter was continued from August 15, 2017, to allow U.S. Bank National Association to file an amended notice by September 14, 2017. Any opposition to the amended notice was to be filed by September 18, 2017.

Debtors object to the Notice of Mortgage Payment Change filed by U.S. Bank National Association, as Trustee for Credit Suisse First Boston Mortgage Securities Corp., Home Equity Asset Trust 2006-1, Home Equity Pass-Through Certificates, Series 2006-1, its assignees and/or successors, by and through its servicing agent Wells Fargo Bank, N.A., ("Creditor"). Debtors dispute the increase in their mortgage due to the fact that a public nuisance lien filed by the County of Sacramento has been abated. They state that the County of Sacramento had refunded to Creditor the $7,130.00 that Creditor had paid toward the public nuisance lien. Debtors further believe that their mortgage payment to Creditor is $2,242.05 and not $3,466.48, that the Creditor is not entitled to the increased escrow amount of $1,224.43 or additional administrative trustee fees that were created by the March 2, 2017, Notice of Mortgage Payment Change, and that the Notice of Mortgage Payment Change should be disallowed.

Creditor has filed a response stating that it agreed that the fee associated with the nuisance that increased escrow is no longer at issue. Creditor requests that the objection be denied or alternatively that the matter be continued for 30 days so that an amended Notice of Payment Change can be filed. The court permitted the Creditor to file an amended notice.

14. 17-24541-B-13 ARTHUR POMPA
JPJ-1 Peter Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-22-17 [28]

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

The matter will be determined at the scheduled hearing.

This matter was continued from September 12, 2017, to allow the Debtor to file copies of his tax return and a declaration from his mother stating her $800.00 per month contributions to the Debtor. If tax returns have not been provided and a declaration filed by the time of the hearing, the objection will be sustained and the motion to dismiss conditionally denied. No further continuances are permitted.