

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

November 4, 2014 at 2:00 p.m.

-
1. [14-28617](#)-C-13 ROBERT WOLD OBJECTION TO CONFIRMATION OF
DPC-1 Peter G. Macaluso PLAN BY DAVID P. CUSICK
Thru #2 10-8-14 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 8, 2014. 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 overrule the Objection.

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

November 4, 2014 at 2:00 p.m.
Page 1 of 64

that the plan relies on a pending Motion to Value the secured claim of Wells Fargo Bank, N.A. The hearing on the Motion is set for November 4, 2014. If the Motion is not granted, Debtor's plan lacks sufficient monies to pay the claim in full.

The court is prepared to grant the Motion to Value the secured claim of Wells Fargo Bank, N.A. at the hearing on November 4, 2014. Therefore, the Trustee's Objection is resolved and will be 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 August 26, 2014 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.

2. [14-28617](#)-C-13 ROBERT WOLD
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
10-7-14 [[14](#)]

Final Ruling: No appearance at the November 4, 2014 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 October 7, 2014. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2900 Holloway Drive, Georgetown, California. The Debtor seeks to value the property at a fair market value of \$90,000 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 \$122,961.76. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$109,356.62. 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 Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 2900 Holloway Drive, Georgetown, 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 \$90,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. [14-22318](#)-C-13 AUDREY LYTLE
DPC-1 Melissa D. Polk
Thru #5

CONTINUED MOTION TO DISMISS
CASE
9-17-14 [[68](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, xx days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing on the motion to dismiss to [date] at [time].

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Trustee's Objection to Confirmation and the Objection to Confirmation of Blue Sky Fund, LLC were sustained on June 3, 2014. Debtor has not filed an amended plan or motion to confirm the amended plan.

TRUSTEE'S MOTION TO CONTINUE

On October 1, 2014, Trustee filed a Motion to continue the hearing on the Motion to Dismiss to November 4, 2014 at 2:00 p.m. to be heard with Debtor's Objection to Claim. The court is setting the Objection to Claim for an evidentiary hearing and will continue the Trustee's Motion to the same date.

DEBTOR'S RESPONSE

Debtor requests the Trustee withdraw the Motion or that the Motion be denied "pending resolution" of the Objection to Claim set for November 4, 2014. Debtor notes that on September 30, 2014, the court continued Blue Sky Fund LLC's Motion for Relief from Stay, for it to be heard with the Motion to Dismiss.

The court's decision is to continue the hearing on the Motion to Dismiss to November 4, 2014 at 2:00 p.m. Debtor has not proposed a modified plan but is attempting to reconcile issues pertaining to Blue Sky Fund, LLC's secured claim.

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

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

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

IT IS ORDERED that the hearing on the Motion is continued to **[date]** at **[time]**.

4. [14-22318](#)-C-13 AUDREY LYTLE
MDP-2 Melissa D. Polk

OBJECTION TO CLAIM OF THE BLUE
SKY FUND, LLC, CLAIM NUMBER 4
AND/OR MOTION TO REQUEST TO
DISALLOW CLAIM
9-17-14 [[72](#)]

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - 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, and Office of the United States Trustee on September 17, 2014. Forty-four 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).

The Objection to Claim of The Blue Sky Fund, LLC is set for an evidentiary hearing on [date] at [time].

Audrey Bell Lytle, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of The Blue Sky Fund, LLC ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$258,293.97, which includes pre-petition interest of \$8,070.75 and pre-petition costs and fees of \$26,732.62. Objector asserts that the pre-petition arrears include costs and fees accrued post-petition, Creditor did not provide an adequate accounting of attorneys' fees, Creditor did not define "payoff fees" and "other fees," Creditor did not provide adequate evidence to support the principal amount, and Creditor did not properly calculate interest.

Debtor's Objections breakdown as follows:

1. Creditor's claims includes the following costs and fees

accrued after the filing date: (1) Attorneys' fees; (2) appraisal/broker's price opinion fees; and (3) foreclosure fees.

2. Creditor's claim included attorneys' fees of \$9,201.30 in the original proof of claim. The amended proof of claim includes increased fees of \$18,864.61. Debtor argues Creditor did not provide evidence to support the doubling of the fees in the past five months.
3. The Amended Proof of Claim includes fees and costs related to "payoff fees" and "other fees," but these terms are not defined.
4. The Amended Proof of Claim shows the principal balance due as \$223,490.60; however, the initial disbursement on the Home Equity Line of Creditor was approximately \$119,000 and Creditor did not submit evidence of written requests that support the increase in the principal amount.
5. The Amended Proof of Claim includes interest of \$8,070.75. Debtor asserts that interest and finance charges are based on the principal balance and cash advance loans and Creditor did not provide evidence of cash advance loans.

CREDITOR'S RESPONSE

In response to Debtor's Objection, Creditor makes the following rebuttal arguments:

1. Debtor's objection does not comply with LBR 3007-1. Local Bankr. R. 3007-1(a) provides:

Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim.

Debtor has not submitted any evidence to the court to support the objection.

2. Creditor argues that its (1) Attorneys' fees; (2) appraisal/broker's price opinion fees; and (3) foreclosure fees are recoverable.

With respect to the attorneys' fees, Creditor's original proof of claim included \$9,210.30 for attorneys' fees incurred prior to the filing. Debtor did not object to these fees. Debtor sought to avoid Creditor's second deed of trust against her residence. As a result, Creditor retained counsel to defeat Debtor's proposed plan and lien strip motion. This caused Creditor to incur an additional \$9,654.31 in attorneys' fees

and costs, resulting in the Amended Proof of Claim amount of \$18,864.61.

Creditor argues that the appraisal fees of \$1,850 were incurred to Defend Debtor's lien strip Motion.

The foreclosure fees of \$3,244.73 was the total amount Creditor had to pay its foreclosure trustee as of the date this case was filed. After Creditor objection to Debtor's lien strip motion, Debtor's counsel requested an update on all amounts due under the loan. As part of this process, Creditor requested and received from its foreclosure Trustee an update on the total amount due, which amount (\$4,722.33) was then included in Creditor's Amended Proof of Claim.

3. Creditor provided the Declaration of Michael M. Wintringer (ECF 98) as supporting evidence that the attorneys' fees and costs were reasonable and necessary to defend and defeat Debtor's proposed plan and lien strip motion.
4. Creditor states that Debtor did not object to "payoff fees" and "other fees" in the original proof of claim. The Declaration of Chris Williams (ECF 97) explains that "payoff fees" of \$215.00 represent at least seven (7) charges at \$30.00 each over the life of the loan for a reinstatement and/or payoff statement pursuant to California Civil Code Section 2943(e)(6). The fees are incurred each time a borrower and/or a borrower's agent requests such information, a loan modification is process, a proof of claim is prepared for a bankruptcy case, or a foreclosure is commenced or set for sale. See Decl. of Christ Williams, P. 3-4.

The Declaration of Chris Williams further states that "other fees" of \$275.00 represent a broker's price opinion obtained by ResCap in January 2010 as part of a Forbearance Agreement requested by Debtor.

5. Creditor argues that the principal balance is correct. Page 4 of the Chris William's Declaration states that the principal balance includes the following cash advances requested by Debtor in writing:
 - a. \$27,500 on 09/27/2005
 - b. \$20,000 on 10/28/2005
 - c. \$7,000 on 1/25/2005 (reduced to \$5,810.72 due to available credit limit)

Copies of the written requests signed by Debtor are attached as Exh. H, Dkt. 99.

6. Creditor argues the pre-petition interest is properly calculated. The claim calculated pre-petition interest accrual at a rate of approximately 1.00% per year, when in fact the applicable interest rate under the loan agreement is 13.9 per year. Creditor states it will honor the lower rate for purposes of determining the total amount of its claim that must be repaid through the plan, but Creditor will not agree

to accept the lower rate as the "market" rate Debtor is required to pay on the allowed secured claim over the life of the plan.

DECLARATION OF PATRICIA WALDON

Debtor submitted the Declaration of Patricia Waldon in support of her Objection. Ms. Waldon is a registered Tax Preparer with CTEC ID A014003, a Registered Tax Return Preparer with the IRS using PTIN P00195748 and a Notary Public Commission Number 1939759 expiring July 2, 2015. Ms. Waldon asserts she received and reviewed copies of the original HELOC loan documents; Forbearance Agreement dated December 30, 2008, Forbearance Agreement dated April 7, 2010; Blue Sky Fund, LLC's Proof of Claim; Assignment of Deed of Trust on April 12, 2013; Assignment of Deed of Trust done on March 26, 2014; Payment Summary; Payoff Demand; and various other documents provided to her by Debtor.

Ms. Waldon testifies that Debtor maintains that the following advances and fees on the HELOC are not her responsibility:

1. \$27,500 cash advance on 09/28/2005
2. \$1,375 cash advance fee on 09/28/2008
3. \$20,000 cash advance on 10/31/2005
4. \$1,000 cash advance fee on 10/31/2005
5. \$5,810.72 cash advance on 11/28/2005
6. \$290.54 cash advance fee on 11/28/2005
7. \$13,568.66 Advance Loan Modification on 05/20/2008
8. \$19,939.54 Advance Loan Modification on 08/07/2009
9. \$17,202.52 Advance Loan Modification on 12/20/2010

Ms. Waldon asserts that, given her analysis of the documents and Debtor's statements that the above referenced charges are not her responsibility, she prepared a recalculation of the HELOC and concluded that the total amount owed by Debtor, including interest is \$171,992.66.

DECLARATION OF MELISSA POLK

On October 31, 2014, counsel for Debtor filed a Declaration in response to Creditor. The Declaration argues that the evidence provided by Creditor does not support the \$18,864.61 in attorneys' fees listed on the amended proof of claim. Declarant questions where the invoices are from Creditor's counsel.

Declarant reiterates that Debtor disputes she owes the amounts of the cash advances. Declarant reasserts that Debtor stated she did not request the cash advance loans. The Declaration suggests that the signatures on the cash advance agreements are different from other signatures on other exhibits.

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).

The court has various issues of face to resolve. The overarching question is how the court should calculate the principal on the loan and the resulting interest. Debtor and Creditor have presented opposing evidence on the respective amounts. Debtor denies that she even entered into the cash advance agreements that account for a significant amount of the claim. The court's decision is to set the matter for an evidentiary hearing. This will allow the court the opportunity to evaluate the evidence, the veracity of the statements being made, and the quality of the arguments in an organized and cohesive manner.

The court's decision is to set the matter for an evidentiary hearing focused on determining the principal amount of the loan securing Creditor's deed of trust and the resulting amount of interest.

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 Creditor filed in this case by the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection is set for an evidentiary hearing on **[date]** at **[time]**.

5. [14-22318](#)-C-13 AUDREY LYTLE
MMW-4 Melissa D. Polk

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-4-14 [[59](#)]

THE BLUE SKY FUND, LLC VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion for Relief From the Automatic Stay is continued to [date] at [time].

The Blue Sky Fund, LLC seeks relief from the automatic stay with respect to the real property commonly known as 4621 Windsong Street, Sacramento, California. The moving party has provided the Declaration of Chris Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williams Declaration states that the Debtor has not made 6 post-petition payments. The loan matured on September 1, 2013, making the amount owing of \$245,312.06 immediately due. with a total of \$ in post-petition payments past due. A Notice of Default was recorded on April 26, 2013 and a Notice of Sale was published on September 5, 2013. From the evidence

provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$563,045.06 (including \$245,312.06 secured by movant's second trust deed), as stated in the Williams Declaration, while the value of the property is determined to be \$365,000, as stated in the court's order on Debtor's Motion to Value (Dckt. 58).

CHAPTER 13 TRUSTEE RESPONSE

The Trustee notes that Debtor's plan, filed March 13, 2014, provides for Creditor's second deed of trust as a Class 2 claim reduced to \$0.00 based on the value of the collateral. As a result of a Motion to Value collateral, the Creditor's secured claim was reduced to \$47,267.00. The property was valued at \$365,000 and the senior lien totals \$317,733.

Debtor's plan was not confirmed and Amended Plan has not been filed.

DEBTOR'S OPPOSITION

Debtor argues that she filed an objection to Creditor's proof of claim on September 17, 2014. She requests that the Motion be denied pending the outcome of the Objection, the hearing for which is set for November 4, 2014.

The Objection to the Blue Sky Fund's Claim are summarized as follows:

- A. The Proof of Claim includes costs and fees accrued after the commencement of the bankruptcy case. The objection seeks to have these removed from the pre-petition claim (and presumably being advanced as post-petition defaults) and that justification be provided for the costs and fees.
- B. Attorneys' fees of \$9,201.30 were included in the first Proof of Claim filed by this Creditor, with the amount doubling to \$18,864.61 the amended proof of claim. No accounting for such fees as been provided.
- C. Payoff fees are not explained in the Proof of Claim.
- D. No evidence to support a principal balance of \$224,490.60 has been provided by Creditor.
- E. Interest in the amount of \$8,070.75 is incorrectly computed.

Objection to Claim No 4-2, Dckt. 72. The objection does not state what Debtor asserts is the accurate claim amount.

Debtor asserts that she has not filed an Amended Plan because she is disputing the amount of pre-petition costs and fees listed in Creditor's proof of claim.

CREDITOR'S RESPONSE

Creditor argues that Debtor's response is a "stall tactic" and

should not prevent the court from ruling on the Motion for Relief. Creditor argues that Debtor previously admitted the validity and amount of it's secured claim based on statement made in her Motion to Value. Debtor's statements included an assertion that the present balance owed to Creditor is \$245,312.06, a figure drawn from Creditor's proof of claim that included more than \$21,000 in pre-petition interest, late charges, legal fees and foreclosure fees. Debtor did not object to the proof of claim.

DISCUSSION

The court's decision is to continue the hearing on the Motion for Relief from Stay to **[date]** at **[time]**. The court is setting the Objection to Claim for an evidentiary hearing and will continue the Trustee's Motion to the same date. Debtor shall continue to make adequate protection payments for the months leading up to resolution of this motion in an amount of \$875.00, plus \$52.50 for estimated Chapter 13 Trustee's fees, subject to the following conditions and restrictions:

Adequate Protection

This bankruptcy case was filed on March 7, 2014. There remain fifty-four (54) months for this Debtor for a maximum sixty (60) month plan. Paying the secured claim of \$47,267.00 at an estimated 3.75% interest (the court makes no determination on what the appropriate interest rate, if any, must be included in the Plan for this secured claim) over 54 months requires a monthly payment to this Creditor of \$875.00.

As a condition of the continuance, the Debtor shall pay to the Chapter 13 Trustee \$875.00, each, for October and November adequate protection payments by October 3, 2014, and October 25, 2014, plus an additional \$52.50 with each payment for the estimated Chapter 13 Trustee's fees for the disbursement computed at an estimated six percent (6%). The Chapter 13 Trustee shall make a special disbursement on or before October 10, 2014, to Creditor for the October 2014 adequate protection payment, and disburse the November 2014 adequate protection when making the normal distributions for plan payments made by October 25, 2014. The adequate protection payment shall be applied to the secured claim as previously determined by the court, and if the case is dismissed, to interest on the claim which has accrued since the commencement of this case.

If either adequate protection payment, including the Trustee's Fees, are not timely made, the Trustee shall file a Statement of Non-Payment with the court and serve Debtor, Debtor's Counsel, and Creditor's Counsel. If the adequate protection payment is not made to the Trustee, the creditor may have this motion reset for the first available regular Chapter 13 Relief From Stay Calendar, providing the Chapter 13 Trustee, Debtor, and Debtor's counsel with at least seven calendar days notice of the reset hearing date. Creditor may request the court to accelerate the hearing date by ex parte motion.

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

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

The Motion for Relief From the Automatic Stay filed

November 4, 2014 at 2:00 p.m.

Page 14 of 64

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

IT IS ORDERED that the Motion for Relief from Stay is continued to [date] at [time].

IT IS FURTHER ORDERED that as condition of the continuance, the Audrey Lytle D. Polk, the Debtor, ("Debtor") shall pay to the Chapter 13 Trustee \$875.00 adequate protection payments on the 25th of each month leading up to the resolution of this Motion, plus an additional \$52.50 with each payment for the estimated Chapter 13 Trustee's fees for the disbursement computed at an estimated six percent (6%). The adequate protection payment shall be applied to the secured claim as previously determined by the court, and if the case is dismissed, to interest on the claim which has accrued since the commencement of this case.

IT IS FURTHER ORDERED that if any adequate protection payment, including the Trustee's Fees, are not timely made, the Trustee shall, within one business day of the payment not being timely made by Debtor, file a Statement of Non-Payment with the court and serve Debtor, Debtor's Counsel, and Creditor's Counsel. If the adequate protection payment is not made to the Trustee, the creditor may have this motion reset for the first available regular Chapter 13 Relief From Stay Calendar, providing the Chapter 13 Trustee, Debtor, and Debtor's counsel with at least seven calendar days notice of the reset hearing date. Creditor may request the court to accelerate the hearing date by ex parte motion.

6. [11-33923](#)-C-13 LAN QUACH
SDB-2 W. Scott de Bie

CONTINUED MOTION TO VALUE
COLLATERAL OF THE BANK OF NEW
YORK MELLON TRUST COMPANY
8-26-14 [[42](#)]

Final Ruling: No appearance at the November 4, 2014 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 October 1, 2014. 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). 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 The Bank of New York Mellon Trust Company, N.A., "Creditor," is granted.

Debtor seeks an order valuing the collateral securing the claim of Bank of New York Mellon National Trust Company, N.A. ("Creditor").

PRIOR HEARING

At the hearing on September 30, 2014, the court continued the matter to November 4, 2014, because Debtor did not serve Creditor in accordance with Fed. R. Bankr. P. 7004(h).

SUPPLEMENTAL CERTIFICATE OF SERVICE

On October 1, 2014, Debtor uploaded a Certificate of Service to the Docket reflecting that Creditor was served in accordance with the Bankruptcy Rules. Service being sufficient, the court will take up the substance of the motion.

MOTION TO VALUE

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7601 Vallecitos Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$68,000 as of the petition filing date. As the owner, the

November 4, 2014 at 2:00 p.m.

Page 16 of 64

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 \$174,508.62. The Bank of New York Mellon Trust Company, N.A.'s second deed of trust secures a loan with a balance of approximately \$41,468.61. 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 The Bank of New York Mellon Trust Company, N.A. secured by a second deed of trust recorded against the real property commonly known as 7601 Vallecitos 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 \$68,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

7. [14-29625](#)-C-13 THOMAS/PEGGY GUERRERO
SNM-1 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
10-1-14 [[10](#)]

Final Ruling: No appearance at the November 4, 2014 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 October 1, 2014. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of PNC Bank, National Association, "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 779 Cement Hill Road, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$259,000 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 \$296,968. PNC Bank, National Association's second deed of trust secures a loan with a balance of approximately \$59,654. 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 PNC Bank, National Association secured by a second deed of trust recorded against the real property commonly known as 779 Cement Hill Road, Fairfield, 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 \$259,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 October 8, 2014. 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 overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the pending Motion to Avoid the Lien of Discover Card. If the motion is not granted, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

The court is prepared to grant the pending Motion at the hearing on November 4, 2014, resolving the Trustee's objection.

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 August 26, 2014 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.

Final Ruling: No appearance at the November 4, 2014 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 September 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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

PRIOR HEARING

This matter came up for hearing on October 21, 2014. At that hearing the court continued the matter because Debtors presented insufficient evidence concerning the recordation of an abstract of judgment. The court permitted a continuance for Debtors to upload the requisite evidence.

SUPPLEMENTAL EVIDENCE

On October 27, 2014, Debtors uploaded a supplemental declaration (Dkt. 30) and supplemental exhibits (Dkts. 31 and 32).

In the Declaration, Debtors state that they reviewed information provided by the Sacramento County Recorder's office (attached as Exh. E), which discloses an abstract of judgment was recorded by Discover Bank on February 12, 2012, Book 20120216, Page 01574.

From the evidence presented, the court determines that the subject abstract of judgment was recorded by Discover Card with the Sacramento County Recorder's Office.

MOTION TO AVOID LIEN

A judgment was entered against the Debtors in favor of Discover Bank

for the sum of \$17,763.76. The Abstract of Judgment was recorded with the Sacramento County Recorder on February 12, 2012. The lien attached to the Debtor's residential real property commonly known as 240 Allaire Circle, Sacramento, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$330,000 as of the date of the petition. The unavoidable consensual liens total \$228,147.31 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of \$100,000 in Schedule C. The respondent purportedly holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is insufficient equity to support the entirety of the judicial lien. Therefore, the fixing of the lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B) of any amount beyond \$1,852.69.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Discover Bank, Sacramento Superior Court Case No. 34-2011-00108102, recorded on February 12, 2012, Book 20120216, Page 01574, with the Sacramento County Recorder, against the real property commonly known as 240 Allaire Circle, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1) of any amount beyond \$1,852.69, subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the November 4, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 Chapter 13 Trustee filed a statement indicating he has no opposition to the Motion on October 21, 2014. 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 September 30, 2014 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.

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 October 8, 2014. 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 following basis:

1. Debtor is \$3,245 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,245.00 is due on October 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor has not paid the filing fee installment of \$77.00 due on October 2, 2014.

The court docket reflects that the installment fee was paid October 28, 2014. Debtors have not responded to the Trustee's delinquency concerns. 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. [14-28943](#)-C-13 VAN/LISA LEONARD
DPC-1 Peter G. Macaluso
Thru #15

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-8-14 [[27](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 8, 2014. 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 objects to confirmation of Debtors' plan because it relies on two pending Motions to Value secured claims of U.S. Bank, N.A. and Greenpoint Mortgage and/or Bank of America, N.A. and/or Ocwen Loan Servicing, LLC. If the Motions are not granted, Debtor cannot afford to make the plan payments or comply with the plan.

The court is continuing the Motions to Value and will continue the Trustee's Objection to the same date.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

IT IS ORDERED that Objection is continued to **[date]** at **[time]**.

13. [14-28943](#)-C-13 VAN/LISA LEONARD
MDE-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
10-9-14 [[31](#)]

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 October 9, 2014. 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 continue the Objection.

U.S. Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that it does not comply with 11 U.S.C. § 1322(b). The plan does not provide for the curing of the default on Creditor's claim. Debtors have omitted the arrearage on the claim, which totals \$1,442.94.

DEBTORS' RESPONSE

Debtors argue that they do not have any pre- or post- petition arrears. Debtors request time to supplement the record. Debtor argues that Creditor merely supplied a proof of claim that fails to account for a payment made on September 16, 2014. Debtors request time to either verify these facts or confirm the plan with specifications in the order confirming.

The court will grant a continuance to the same date at Motions PGM-1

and PGM-2, which are two Motions to Value secured claims.

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 U.S. Bank, N.A. 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 continued to [date] at [time].

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 October 7, 2014. 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-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 Value secured claim of U.S. Bank, N.A., "Creditor," is continued to [date] at [time].

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 128 Partridge Drive, Galt, California. The Debtors seeks to value the property at a fair market value of \$200,000 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 \$205,000. U.S. Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$195,218. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OBJECTION

On October 9, 2014, Creditor filed Proof of Claim 401, in the amount of \$399,954.03, including arrearage in the amount of \$1,442.94. Creditor argues that Debtors' Motion incorrectly alleges that Creditor is the holder of a Second Deed of Trust. Creditor asserts it holds a First Deed of Trust secured by an adjustable rate not in the original amount of \$374,400.

On April 22, 2009, Debtors and Creditor entered into a Loan Modification Agreement by which the Note was modified to reflect the unpaid principal balance as \$415,613.93, which included all arrears due, past due interest, and past due impounds, tax advances, and other charges. The Modification Agreement further provided that repayment of \$195,218.86 will be deferred and will not incur interest.

From Creditor's perspective, Debtors are attempting to avoid the Deferred Principal portion of Creditor's first deed of trust. Creditor argues this amount is not a junior lien and is not subject to lien avoidance.

DEBTORS' RESPONSE

Debtor requests the court grant a continuance to review Creditor's proof of claim.

The court will grant Debtor's request and continue the hearing.

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 is continued to **[date]** at **[time]**.

15. [14-28943](#)-C-13 VAN/LISA LEONARD
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
GREENPOINT MORTGAGE FUNDING,
INC. AND/OR BANK OF AMERICA,
N.A. AND/OR OCWEN LOAN
SERVICING, LLC
10-7-14 [[22](#)]

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 October 7, 2014. 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-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 Value secured claim of Greenpoint Mortgage Funding, Inc. and/or Bank of America, N.A., and/or Ocwen Loan Servicing, LLC, "Creditor," is continued to [date] at [time].

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 128 Partridge Drive, Galt, California. The Debtor seeks to value the property at a fair market value of \$200,000 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 instant Motion was filed concurrently with PGM-1 (Dkt. 17). The court continued PGM-1 because the Secured Creditor contested the classification of their secured claim as a second deed of trust and argued

it should be incorporated into the amount of the first deed of trust. As computation of the instant secured claim depends on the amount of the first deed of trust, the court cannot enter an order properly valuing the secured claim of the instant subject creditor.

IDENTITY OF CREDITOR

The Motion is entitled "Motion to Value Collateral of Greenpoint Mortgage Funding, Inc. and/or Bank of America, N.A., and/or Ocwen Loan Servicing, LLC." Debtors' Declaration asserts that Greenpoint originated the loan and it was subsequently transferred to Bank of America, with Ocwen as the servicer.

The title of the Motion indicates to the court that Debtors do now know who the holder of the deed of trust is on the subject loan. Neither Bank of America, N.A. nor Ocwen Loan Servicing, LLC have filed a Proof of Claim attesting clarifying who is the creditor or the servicer. Debtors did not provide the court with a copy of the original deed of trust and assignment to Bank of America, N.A.

The court will grant Debtors a continuance to the same date as PGM-1. During the time Debtors are resolving the issues with the first deed of trust, they shall also upload to the court's docket exhibits identifying the correct Creditor subject to this motion.

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

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

The Motion for Valuation of Collateral filed by 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 is continued to [date] at [time].

16. [13-32247](#)-C-13 FLOYDETTE JAMES
EWV-48 Eric W. Vandermey
CASE DISMISSED 10/20/14

MOTION TO MODIFY PLAN
9-30-14 [[49](#)]

Final Ruling: No appearance at the November 4, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Modify having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

17. [14-28949](#)-C-13 JERRY/NELIA GAPAL
APN-1 Bert M. Vega
Thru #18

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR WELLS FARGO
BANK, N.A.
9-16-14 [[16](#)]

Final Ruling: No appearance at the November 4, 2014 hearing is required.

Wells Fargo Bank, N.A., having filed a Notice of Withdrawal on October 24, 2014, no prejudice to the responding party appearing by the overruling of the Objection, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Objection from the calendar.

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 October 1, 2014. 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 overrule the Objection.

CTCU a Division of Self Help Federal Credit Union ("Creditor") opposes confirmation of the Plan on the basis that the contract interest rate for the loan is 7.49% and not 0.00% as applied in Debtors' plan.

The secured claim involves a purchase-money security loan for a 2004 Hummer, Vin ending in 1762. The monthly contract payment is \$519.57 (not the \$146.89) proposed in Debtors' plan.

Debtor filed an Amended Plan on October 26, 2014. The filing of a new plan is a *de facto* withdrawal of a pending plan. The Objection Creditors opposition concerns the now withdrawn plan and will be overruled as moot.

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

holding that:

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

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

IT IS ORDERED that Objection is overruled as moot.

19. [14-20452](#)-C-13 DAVID/NANCY VENABLE
LBG-3 Lucas B. Garcia

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA, INC.
10-6-14 [[48](#)]

Final Ruling: No appearance at the November 4, 2014 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 October 6, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtors' declaration. The Debtor is the owner of 2005 Chevrolet Trailblazer. The Debtors seek to value the property at a replacement value of \$3,931.00 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 (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on March 12, 2010, more than 910 days prior to the filing of the petition, with a balance of approximately \$8,327.10. 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 \$3,931.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

The Motion for Valuation of

November 4, 2014 at 2:00 p.m.

Page 40 of 64

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 Santander Consumer USA secured by a 2005 Chevrolet Trailblazer, is determined to be a secured claim in the amount of \$3,931.00, 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 \$3,931 and is encumbered by liens securing claims which exceed the value of the Property.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 25, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The plan was filed as an exhibit. The official record of the court does not reflect that Debtor's First Modified Chapter 13 Plan has been filed. The official record is the electronic record, LBR 5005-1, and the electronic docket does not reflect the plan as filed.

The plan was filed as an Exhibit to Court Docket 65 and not filed separately with the court. Additionally, Debtors previously filed a First Modified Chapter 13 Plan, which was denied at hearing September 30, 2014.

The modified plan does not comply with the local rules and is not confirmed.

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

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

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

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

21. [13-31754](#)-C-13 VICTOR/SVETLANA PARSHIN OBJECTION TO CLAIM OF ONEWEST
RJ-7 Richard L. Jare BANK, N.A.
9-11-14 [[153](#)]

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - 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, and Office of the United States Trustee on September 11, 2014. Forty-four 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).

The Objection to Claim of OneWest Bank, N.A. is overruled.

Victor & Svetlana Parshin, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of OneWest Bank, N.A. ("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 \$412,370.17, with \$26,099.35 in arrears. Objector asserts that there is not arrearage portion to the claim and the arrearage specified should be \$0.00.

The arrearage amount at issue is comprised of \$1,426.63 in interest and \$24,486.63 in litigation attorneys' fees. As to the interest, Debtors argue that it was accrued prior to the September 16, 2014 grace period and it cannot be an arrearage until after the grace period for payment.

As to the litigation attorneys' fees, Debtors argue that paragraph 35 of the Deed of Trust allows attorneys' fees for litigation, but it does not state a due date for the claim for attorneys' fees. Debtors take the position that if the normal amortized payment does not, over the course of

the life of the loan, pay off respondent's claim, then the litigation attorneys' fees are due at the maturity of the loan on June 1, 2045 and are not arrearage. Debtors then point to paragraph 3.a of the Note, which addresses payments. This section states that Debtors will pay principal and interest every month and then, if after making regular monthly payments, other charges are not paid off by June 1, 20145, they then become due. Debtor would argue that the litigation attorneys' fees fall under "other charges."

CREDITOR'S RESPONSE

Creditor asserts that the amounts included in the Proof of claim were all due at the time of Debtors' September 6, 2013 filing and represent a "snapshot" of all amounts due on the loan as of the filing date. The attorneys' fees of \$24,486.63 were incurred between June 9, 2011 and March 21, 2013, both dates being prior to the filing date. Debtors argue that the interest due on the obligation was not triggered on the first of the month as required by the loan documents, but on the sixteenth of the month, after the fifteen-day grace period expired. The Note specifies that payments were and are due on the "first day of each month."

Creditor argues that Debtors fail to recognize that claims are determined as of the petition date. 11 U.S.C. § 502(b). Even if the payment was within the contractual grace period, it was "due" on the first of the month and "late" on the fifteenth. The grace period is a period in which a late payment or performance may be made without penalty and does not affect the due date.

DEBTORS' RESPONSE

Debtors concede that the \$1,426.63 interest charge is an arrear if the fifteen-day grace period in the note does not apply to classification of the payment as an arrear.

Debtors do not deny that the \$24,486.63 litigation attorneys' fee is part of the pre-petition obligation, but reiterate their argue that to the extent the regular monthly payments under the note do not pay the balance off over time, then it is due at the date of maturity.

Debtors further argue that they are largely current on monthly payments to Creditor, despite the attorneys' fees and because Creditor has accepted monthly payments for twenty-six months after the initial imposition of attorneys' fees, without declaring a default, it should be prevented from now asserting the fees are immediately due.

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)*,

Pre-petition arrears include any monies that are due to a creditor up to the date of the bankruptcy filing. The Proof of Claim filed by Creditor was executed and filed in accordance with the Bankruptcy rules and; therefore, constitutes prima facie evidence of the validity of the amount of the claim.

The court finds that all sums included in the arrearage amount were incurred pre-petition. The Debtor presented no persuasive argument, supported by legal authority, to suggest that the interest due or attorneys' fees due should not be included in the arrearage amount. First, the interest amount of \$1,426.63 was computed from August 1, 2013 through September 6 2013, and falls squarely pre-petition. Second, attached to the Proof of Claim is a breakdown of the Litigation Attorneys' Fees that includes fees dating from June 9, 2011 through March 21, 2012. Every fee was incurred and presumptively due pre-petition.

Based on the evidence before the court, the creditor's claim is allowed in its entirety. The Objection to the Proof of Claim is overruled.

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 OneWest Bank, N.A., Creditor filed in this case by the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 2 of OneWest Bank, N.A. is overruled and the claim is allowed in its entirety.

22. [14-28858](#)-C-13 RENE PARADA AND ANGELICA ARANA
DPC-1 ARANA
Thomas O. Gillis
OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-8-14 [[17](#)]

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 October 8, 2014. 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 overrule the Objection.

The Chapter 13 Trustee opposes confirmation on the basis that the Debtors' expenses are listed improperly. The Debtors are over median income and propose plan payments of \$175 per month for sixty (60) months with no less than 4.5% to unsecured creditors.

At the 341 Meeting, Debtors admitted that they assist their adult aged son and daughter with expenses for rent, food, and college in the range of \$1,000 to \$2,000 per month. Schedule J does not list expenses for either the twenty-one (21) year old or the twenty-four (24) year old, and it does not appear Debtors can make the payments or comply with the plan.

DEBTORS' RESPONSE

Debtors assert in response that they are no longer financially assisting their children. See Declaration of Rene Prada, ECF 21. Both children are now supporting themselves with employment.

The Debtors' testimony in their Declaration resolves the Trustee's concerns that Debtors would be providing financial support to their children that would compromise their ability to make plan payments. 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 August 30, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 28, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor's plan does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor testified at the 341 Meeting that Debtor receives \$1,500 per month in rental income. This income is not included on Schedule I.
2. Debtor and Debtor's spouse are both self-employed. Schedule I, line 8 lists net income of \$1,000 for Debtor and \$5,000 for Debtor's spouse. Line 8a requires an attached statement for each property or business, showing gross receipts, expenses, and total monthly net income. Debtor did not file the attached statement and it is not clear to the Trustee if the \$6,000 on Schedule I is gross or net income.
3. Debtor did not select the correct box in section 2.06 of the plan, which should be marked as "complying with LBR 2016-1(c)" or filing a motion for attorneys' fees.
4. The plan does not pass Chapter 7 Liquidation. 11 U.S.C. §

1325(a)(4). Debtor's non-exempt equity totals \$21,288.00 and Debtor is proposing a 0% dividend to unsecured creditors. Debtor is married and Debtor's spouse is not included in the bankruptcy. Debtor has not filed a spousal waiver for use of the California State Exemptions under C.C.P. § 703.140.

5. Trustee is uncertain whether Debtor's plan has been proposed in good faith or if it reflects Debtor's best efforts. 11 U.S.C. §§ 1325(a)(3) & 1325(b). According to Form B22C, the Statement of Current Monthly Income, Line 3b, Debtor listed ordinary and necessary business expenses totaling \$5,721.33. Debtor is over the median income and has not properly completed the CMI.

DEBTOR'S RESPONSE

Debtor filed Amended Schedules I and J that allegedly more clearly and properly reflect income and expenses of Debtor. Debtor and her husband operate as independent contractors, she is a beautician and her spouse is operates a pool cleaning business.

Debtor asserts that the Plan was filed and inadvertently did not include checking the box concerning LBR 2016-1(c). Debtor clarifies that the attorneys' fees in the plan were incorrect and should be listed at \$1,810, as shown on the Disclosure of Attorney Compensation and the Rights and Responsibilities form. Debtor requests these items be clarified in the order confirming the Chapter 13 plan.

Debtor is unclear on the liquidation objection and argues there is no non-exempt equity, per Schedule C. Further, Debtor filed the spousal waiver on October 21, 2014.

Debtor filed Amended Form B22C on October 21, 2014, demonstrating that Debtor passes the means test.

DISCUSSION

Amended Schedules I & J

On October 21, 2014, Debtor filed Amended Schedules I & J. Schedule I includes income listed on Line 8a of \$1,000 for Debtor and \$4,100 for Debtor's spouse. Debtor still did not attached a statement for the properties and/or businesses. Schedule I does not address the \$1,500 in rental income testified to at the 341 Meeting.

While Debtor did file the spousal waiver, appears to have remedied the Trustee's concerns regarding attorneys' fees, and filed an Amended Form B22C, Debtor still lacks sufficient evidence supporting Schedule I. Therefore, the court's decision is to deny the motion.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

24. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA CONTINUED MOTION TO CONFIRM
MRL-6 ALICE MAY PLAN
Thru #25 Mikalah R. Liviakis 9-4-14 [[85](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 4, 2014. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee and Dawn Lorraine McGrath, "Creditor," oppose confirmation of the plan.

TRUSTEE OPPOSITION

The Chapter 13 Trustee objects to confirmation of Debtors' plan, based on the following:

1. Debtors' plan proposes to avoid the lien of Dawn Lorraine McGrath; however, the Motion to avoid was withdrawn via a Notice of Withdrawal dated September 30, 2014. Debtors cannot make the proposed payments or comply with the plan under 11 U.S.C. § 1325(a)(6).
2. Trustee argues that Debtors did not properly disclose rental income and that the plan may not reflect Debtors' best efforts. 11 U.S.C. § 1325(b). Debtors' Statement of Current Monthly Income includes \$600 per month of rental income while Amended

Schedule I lists no rental income. Debtors testified at the 341 Meeting that the property at 910 Branciforte Street, Vallejo, California is rented out for gross rent of \$1,250 per month.

3. Debtors may not be able to make the payments under 11 U.S.C. § 1325(a)(6). Debtors' testified at the first meeting of creditors that they are renting a residential property for \$1,250 per month; however this property is not the Debtors' street address on Debtors' petition. Further, Schedule J does not disclose the rent expense.

CREDITOR'S OBJECTION

Creditor joins in the Trustee's objections and takes issue with the following disclosures of Debtors:

1. Creditor argues that Debtors recent spent \$5,000 on admission for a "Media and Eco Celebrity Event" in connection with Dahliana, LLC. Creditor argues that Debtors' income and expense disclosures do not provide for this type of excess income to attend such events and hypothesizes that the income and expenses are not properly disclosed.
2. Creditor states that she learned that prior to filing, Debtors had other bank accounts at a Chase Bank in Grass Valley California and that these accounts differ from the Chase Bank accounts in Sacramento disclosed on Debtors' schedules.
3. Creditor notes that the Schedules do not mention the bank accounts for Debtors' businesses: Dahliana, LLC; Skin Studio; or The Handy House Man.
4. Debtors' identify a claim against David Springfield for malpractice in the amount of \$4,000. Creditor argues that the contract with Springfield was not adequately disclosed. Creditor asserts that the contract provides that Springfield is to pay the judgment Creditor is seeking here, in full, and will take full responsibility for it. Creditor's point is that the contract claim against Springfield is worth over the amount due on the judgement, or \$33,000.

DEBTORS' RESPONSE

Debtors state that the first Trustee objection is resolved because they filed another Motion to Avoid Judicial Lien.

Debtors states that the rental income is adequately disclosed. The figure of \$729.47 listed on line 8a of Schedule I is the rental income after accounting for \$420.53 mortgage expense. Debtors admit this is not the clearest accounting, but after applying the mortgage payment to the gross income of \$1,250, Debtors take home \$729.47 in net rental income per month.

Debtors argue that the rent expense is disclosed on line 4 of Schedule J, where Debtors indicate that they pay \$650 per month for rent. Another \$650 is paid by Debtors' business, the Handy House Man and is listed as an expense on the Business Income and Expenses sheet attached to Schedule I.

Debtors argue that the "Media and Eco Celebrity" event cost approximately \$1,000, as it was subsidized by a friend and an agreement to buy future advertising. Debtors assert that the business expenses were properly disclosed and that this is a legitimate business expense as Dahliana, LLC requires advertising to be profitable.

Debtor states that Debtor Carola May's bank accounts were combined on the schedules. Debtor Carola May uses four bank accounts. One of the accounts is Dahliana's, and Debtors assert it does not need to be listed. One is empty. One is Skin Studio's, and the last is a savings account. At the current time, co-Debtor has under \$1,000 in all four accounts. Debtor asserts there is no attempt to hide assets.

Debtors believe there is nothing to recover against David Springfield (a claim originally valued at \$4,000). Debtors have been unable to find counsel to prosecute the claim and have no means to prosecute it themselves.

DISCUSSION

The court's decision is to continue the hearing on the Motion to Confirm to the same date at the Motion to Avoid Lien.

First, if the Stipulation is approved at the continued hearing, it should resolve objecting Creditor's opposition to the Motion to Confirm. Second, what remains outstanding is disclosure of the property Debtors are renting. As the Trustee stated, the property is not the street address listed on Debtor's petition.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to [date] at [time].

25. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA
MRL-7 ALICE MAY
Mikalah R. Liviakis

CONTINUED MOTION TO AVOID LIEN
OF DAWN LORRAINE MCGRATH
10-6-14 [[102](#)]

Tentative Ruling: The Motion to Avoid Judicial Lien 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, parties requesting special notice, and Office of the United States Trustee on October 6, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is continued.

A judgment was entered against the Debtor in favor of Dawn Lorraine McGrath for the sum of \$24,843.02. The abstract of judgment was recorded with Solano County on March 11, 2014. That lien attached to the Debtor's residential real property commonly known as 910 Branciforte Street, Vallejo, California. The lien also attached to Debtor's personal property listed on Schedule B.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$109,000 as of the date of the petition. The unavoidable consensual liens total \$204,092.77 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of

the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

Pursuant to Schedules B, C, D, the approximate value of, liens against, and exemptions taken in personal property are as follows:

PROPERTY	VALUE	LIEN	EXEMPTION CCP 703.140	EQUITY
Cash	\$80		\$80 (b) (5)	\$0.00
Chase Accounts	\$500		\$500 (b) (5)	\$0.00
Chase Accounts	\$100		\$100 (b) (5)	\$0.00
Investment	\$160		\$160 (b) (5)	\$0.00
TV	\$100		\$100 (b) (3)	\$0.00
Bedroom furniture	\$175		\$175 (b) (3)	\$0.00
Living room furniture	\$200		\$200 (b) (3)	\$0.00
Dining Table	\$50		\$50 (b) (3)	\$0.00
Household goods	\$200		\$200 (b) (3)	\$0.00
Clothing	\$250		\$250 (b) (3)	\$0.00
Wedding Rings and Jewelry	\$750		\$750 (b) (4)	\$0.00
Bicycles	\$300		\$300 (b) (5)	\$0.00
Sole Proprietorship	\$1,500		\$1,500 (b) (6)	\$0.00
Sole Proprietorship	\$1,600		\$1,600 (b) (6)	\$0.00
Dahlia LLC	\$2,090		\$2,090 (b) (5)	\$0.00
Malpractice Claim Estimate	\$4,000		\$4,000 (b) (5)	\$0.00
Potential claim	Unknown		\$1.00 (b) (5)	\$0.00
Trademarks	\$3,000		\$3,000 (b) (5)	\$0.00
2011 Nissan Juke	\$9,391	\$15,055	\$1.00 (b) (5)	-5,664
2003 Toyota Tundra	\$4,800		\$4,800 (b) (2)	\$0.00
Laptop	\$1,000		\$1,000 (b) (5)	\$0.00
TOTALS	\$30,246	\$15,055		NONE

After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien in the personal property.

STIPULATION

On October 21, 2014, Debtor and Creditor entered into a Stipulation concerning the Motion to Avoid Lien. The material terms of the Stipulation are as follows:

1. Creditor will withdraw any Objections to this Motion and Objections to Debtors' Plan (filed 09/04/14, Dkt. 88).
2. Creditor will have a secured claim of \$20,000; \$10,000 is to be paid through the plan at 0.00% interest at the rate of \$213 per months, during months 13-60 of the plan, and \$10,000 will be made as a lump sum payment through the Trustee within three weeks of plan confirmation. The source of the \$10,000 lump sum is Alicia Funk, who is gifting the money to the Debtors.
3. If the \$10,000 lump sum amount is not paid within three weeks of plan confirmation, the case will be dismissed via the filing of an order.
4. Full payment of the stipulated amount will satisfy Creditor's entire claim against Debtors and the estate. Creditor agrees not to sue Dahliana, LLC on the claim.
5. Debtors agree to cooperated with any action Creditor commences against David Springfield.
6. If Creditor receives double payment on her claim because of payment from David Springfield, Debtors are entitled to a refund from Creditor. The refund will be reduced by 50% of the attorneys' fees incurred in obtaining the payment. To the extent there would be a double recovery if Debtors continued plan payments to Creditor, Debtors are not required to make those plan payments. The funds, instead, will be distributed to unsecured creditors.
7. Debtors and Creditor agree not to illegally interfere with each other's businesses.
8. If Debtors' plan, filed 09/04/14 (Dkt. 88), is not confirmed, the stipulation is invalid.
9. If the case is dismissed or converted, the agreement is invalid; however, any payments made to Creditor will still be credited against the total amount owed.
10. The agreement is only effective upon court approval.
11. The court shall retain jurisdiction to resolve all disputes arising out of this stipulation.

CHAPTER 13 TRUSTEE

On October 22, 2014, the Chapter 13 Trustee filed a statement indicating he has no opposition to the court granting the Motion.

CHAPTER 13 TRUSTEE RESPONSE

On October 29, 2014, the Chapter 13 Trustee filed a response to the Stipulation presented by Debtors and Creditor.

The Chapter 13 Trustee takes issue with the following:

1. The Stipulation does not state which party will be responsible for filing the order dismissing the case if the \$10,000 lump sum payment is not made within three weeks of plan confirmation. Further, the Stipulation does not require any evidence to prove that payment has not been made.
2. The provision for double payments is unclear. If it is intended to require that the Creditor report if or when she has been double paid, then the Trustee requests that the language be amended to clarify such provision.

DISCUSSION

The court agrees with the Chapter 13 Trustee's concerns regarding the clarity of the Stipulation. The court will grant a short continuance for Debtors and Creditor to upload a clarified stipulation that resolves the Trustee's stated concerns.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the motion is continued to **[date]** at **[time]**.

26. [14-27196](#)-C-13 JENNIFER SALAZAR
Jared A. Day

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-17-14 [[78](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on October 14, 2014).

The Order to Show Cause is sustained. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The fees not having been paid, the Order to Show Cause is sustained and the case is dismissed.

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 Order to Show Cause 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 Order to Show Cause is sustained, no sanctions are ordered, and the case is dismissed.

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 October 8, 2014. 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 overrule the Objection.

The Chapter 13 Trustee filed this Objection not as an opposition to confirmation of the debtor's plan, but to inform the court of the following:

The voluntary petition was filed by Sara O. Taylor and Beatrice O. Hill as attorney in fact for debtor, Ernestine Costello Outlin. Ms. Taylor and Ms. Hill are the Debtor's sisters and both appeared at the First Meeting of Creditors on October 2, 2014.

Having reviewed the Debtor's filing, the Declaration Ms. Taylor and Ms. Hill (Dkt. 11), the court finds no barrier to confirmation immediately present under 11 U.S.C. § 1325(a). 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 September 2, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 17, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtors' first bankruptcy case (No. 13-22111) was filed on February 19, 2013 and dismissed on July 10, 2014 because the Debtors did not make the payments under their confirmed plan. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtors thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed not in good faith if a previous case under Chapter 13 was dismissed within a 1-year period, after

the Debtors failed to perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307 and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtors argue that the extension is necessary to protect Debtors' assets. The instant case was filed to cure pre-petition arrears owed on Debtors' primary residence. Debtors inform the court that one Debtor currently receives retirement income in the amount of \$1,763 per month. The co-Debtor is a para-educator for the Sacramento County Schools and has a gross monthly income of \$2,329.79 and net monthly income of \$1,871.69. Debtors assert that Schedule I and B22C reflect that they are earning sufficient wages to cover all necessary Chapter 13 plan obligations.

Debtors' Declaration explains that during the previous case, co-Debtor Mark Hickey was diagnosed with cancer, which overwhelmed the Debtors and made it difficult for them to manage the day-to-day business. Debtors testify that the situation is better now, as Mark commenced treatment and the Debtors are more organized and prepared to move forward with a Chapter 13 plan.

The court is satisfied that Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay 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 and the automatic stay is extended

pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.