UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 6, 2016, at 3:00 p.m.

1.	**15-28301-E-13** **DPC-2**	**RICHARD/PAULA CUMMINGS** **Mary Ellen Terranella**	**OBJECTION TO CLAIM OF VALLEY YELLOW PAGES, CLAIM NUMBER 6** **10-19-16 [79]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

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

The Objection to Claim is sustained.

David Cusick, the Trustee ("Objector") requests that the court disallow the claim of Valley Yellow Pages ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $605.73. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is March 2, 2016. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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 a 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 deadline for filing a Proof of Claim in this matter was March 2, 2016. The Creditor's Proof of Claim was filed August 25, 2016. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court 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 Valley Yellow Pages, Creditor, filed in this case by David Cusick, 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 to Proof of Claim Number 6-1 of Valley Yellow Pages is sustained, and the claim is disallowed in its entirety.

2. **16-24802-E-13** **KEVIN/BRANDEE MCCANN** **MOTION TO CONFIRM PLAN**
DEF-1 **David Foyil** **9-28-16 [29]**

Tentative Ruling: 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.

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, creditors, and Office of the United States Trustee on September 28, 2016. By the court's calculation, 69 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Amended Plan is denied.

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

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 22, 2016. Dckt. 48. The Trustee states that the Plan is not feasible because it will not complete within sixty months, and the Plan may not be Kevin McCann and Brandee McCann's ("Debtor") best efforts given the financial information submitted on the Schedules.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in 120 months due to there being a Proof of Claim filed by LVNV Funding c/o Shellpoint Mortgage for $134,746.07. Debtor has proposed to pay 27.88% to general unsecured claims but has not accounted for the additional proof of claim. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor is above median income. Form 122C-1, Dckt. 34. That Form lists combined monthly income of $5,875.00, but Schedule I lists $4,641.67. The cover sheet that accompanied the Form indicates

that Amended Schedules I and J are included, but no such amended schedules have been filed. Debtor's Declaration in Support of the Motion to Confirm adheres to the new income amounts, and it also introduces budget changes. Without Debtor filing amended schedules, though, the Trustee and the court are not able to determine if the Plan is the Debtor's best effort under 11 U.S.C. § 1325(b), especially because Debtor appears to have taken on a $350.00 per month payment for a new car, and as well as additional telephone, food, personal care, medical, transportation, charity, vehicle licensing, veterinarian bills, renters insurance, and home maintenance expenses not disclosed on Schedule J.

The Trustee's objections are well-taken. A review of the docket confirms that Amended Schedules I and J have not been filed. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325. 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 Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

3.	**16-27603-E-13** **PGM-1**	**CHRISTINE MCKAY** **Peter Macaluso**	**MOTION TO IMPOSE AUTOMATIC STAY** **11-22-16 [9]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 22, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Impose 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, **----------**.

The Motion to Impose the Automatic Stay is granted.

Christine McKay ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past year with the two prior cases having been dismissed. The Debtor's prior bankruptcy cases (Nos. 16-21315 and 15-26026) were dismissed on October 7, 2016, and January 11, 2016, respectively. *See* Order, Bankr. E.D. Cal. No. 16-21315, Dckt. 36, October 7, 2016; Order, Bankr. E.D. Cal. No. 15-26026, Dckt. 36, January 11, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 23, 2016. Dckt. 13. The Trustee seizes upon Debtor's statement in the Motion that this case is a "skeleton filing." The Trustee is unable to ascertain if the case is confirmable or if the Debtor's circumstances have changed because no Plan and no Schedules have been filed.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Here, both of Debtor's prior cases were dismissed after Debtor failed to make plan payments.

Debtor argues that the instant case was filed in good faith and explains that the previous cases were dismissed due to repeated scenarios of Debtor and Debtor's husband not being able to earn enough money from employment. Dckt. 11. Since 2014, Debtor's husband has worked on commission in life insurance, then as a claims adjuster, then was transferred to Colorado, then worked in sales at Solar City, and then worked for another solar company in Roseville. He expects to be promoted to a salary position on December 1, 2016. Additionally, Debtor progressed from unemployment, to a driving school instructor, to a private investigator presently.

Debtor has testified to the employment-related problems that she and her husband faced over the last couple of years that hinder her bankruptcy cases. Now, both Debtor and her husband appear to be financially stable and able to proceed with prosecuting this case. The court finds that Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay.

On December 1, 2016, Debtor filed the missing documents and a proposed Plan. Dckts. 16–18. The financial information on Schedules I and J do not appear to be implausible, and if this new employment continues for Debtor's spouse, they may be able to fund a plan. But it appears that Debtor, non-debtor Spouse, and counsel will have some work to do to avoid the prior pitfalls (including "borrowing" from taxing agencies).

The Motion is granted, and the automatic stay is in effect in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and pursuant to 11 U.S.C. § 362(d)(4)(B) the automatic stay is in effect in this case for all purposes and parties until terminated by operation of law or further order of the court.

4. **16-23407-E-13** **IRMA QUIAMBAO** **MOTION TO CONFIRM PLAN**
HLG-2 **Kristy Hernandez** **10-21-16 [42]**

Final Ruling: No appearance at the December 6, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2016. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Amended Plan is granted.

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

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 18, 2016. Dckt. 57. The Trustee objects to confirmation because the Plan relies upon a Motion for Approval of Loan Modification and two objections to claims—one against Wells Fargo Bank and one against Solano County Tax Collector. Without all three of those either being granted or sustained in Debtor's favor, the Plan would either not cure pre-petition mortgage arrears or would not have sufficient funds to pay claims.

The court heard the Motion for Approval of Loan Modification on November 22, 2016, and granted it. Dckt. 60. That portion of the Trustee's Opposition is resolved. As for the two objections to claims set for hearing on December 6, 2016, the court has sustained both objections. Therefore, all of the Trustee's objections are resolved.

The Trustee's Opposition having been resolved, and the Amended Plan complying with 11 U.S.C. §§ 1322 and 1325(a), the Motion is granted, and the Amended 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 Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 21, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5.	**16-23407-E-13** **HLG-3**	**IRMA QUIAMBAO** **Kristy Hernandez**	**OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 6** **10-20-16 [32]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 20, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Objection to Claim of Wells Fargo Bank, N.A. is sustained.

Irma Quiambao, the Debtor ("Objector"), requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $500,480.68 with a pre-petition arrears balance of $9,380.07. Objector asserts that Carrington Mortgage approved Debtor for a home loan modification that cured Debtor's pre-petition arrears. If Creditor's claim were allowed to remain as filed, it would result in an overpayment to Creditor. Debtor's Motion to Approve Loan Modification was granted on November 22, 2016. Dckt. 60.

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 a 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).

Based on the evidence before the court, and the court having granted Debtor's Motion to Approve Loan Modification, the creditor's claim is disallowed as to the pre-petition arrears in the amount of $9,380.07. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Bank, N.A., Creditor filed in this case by Irma Quiambao, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to Proof of Claim Number 6-1 of Wells Fargo Bank, N.A. is sustained, and the claim is disallowed as to the $9,380.07 in pre-petition arrears.

6. **16-23407-E-13** **IRMA QUIAMBAO** **OBJECTION TO CLAIM OF SOLANO COUNTY TAX COLLECTOR, CLAIM NUMBER 1**
HLG-4 **Kristy Hernandez** **10-20-16 [36]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 20, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Objection to Claim of Solano County Tax Collector is sustained.

Irma Quiambao, the Debtor ("Objector") requests that the court disallow the claim of Solano County Tax Collector ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $16,097.78. Objector asserts that the claim should be unsecured and allowed in the amount of $0.00 because the Debtor was recently granted a loan modification by her first mortgage servicer, Carrington Mortgage, which resulted in the lender curing all property tax arrears associated with Debtor's real property at 4886 Heritage Court, Fairfield, California. If Creditor's claim is allowed to stand, Creditor will receive an overpayment. Debtor's Motion to Approve Loan Modification was granted on November 22, 2016. Dckt. 60.

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 a 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).

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Solano County Tax Collector, Creditor filed in this case by Irma Quiambao, the Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 1-1 of Solano County Tax Collector is sustained, and the claim is disallowed in its entirety.

7.	**15-28908-E-13** **MJD-1**	**WILLIAM/SARAH MCGARVEY** **Matthew DeCaminda**	**MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.** **10-19-16 [32]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim of Wells Fargo Bank, N.A. 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Value Secured Claim of Wells Fargo Bank, N.A. is granted, and Creditor's secured claim is determined to have a value of $300.00.

The Motion to Value filed by William McGarvey and Sarah McGarvey ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a living room furniture set ("Property"). Debtor seeks to value the Property at a fair market value of $300.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Property secures a purchase-money loan incurred March 2012, more than one year prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $2,813.42. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $300.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by William McGarvey and Sarah McGarvey ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Wells Fargo Bank, N.A. secured by an asset described as a living room furniture set ("Property") is determined to be a secured claim in the amount of $300.00, 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 $300.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

8. 14-27117-E-13 MJD-2 — ANTHONY/GWENDOLYN LAND — Matthew DeCaminada — MOTION TO REFINANCE — 10-20-16 [106]

Final Ruling: No appearance at the December 6, 2016 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, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Anthony Land and Gwendolyn Land ("Debtor") seeks court approval for Debtor to incur post-petition credit. Federal Housing Administration being serviced by First Mortgage Corporation ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification that will increase Debtor's mortgage payment from the current $1,363.84 per month to $1,568.67 per month. The modification will capitalize the pre-petition arrears and provide for an interest rate of 3.50% over the next thirty years. Debtor will net $55,086.00, which Debtor intends to disburse to David Cusick, the Chapter 13 Trustee, in full payment of a proposed Modified Plan (Dckt. 104).

The Motion is supported by the Declaration of Anthony Land and Gwendolyn Land. Dckt. 108. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S NON-OPPOSITION

The Trustee filed a Non-Opposition on November 2, 2016. Dckt. 111. The Trustee notes that Debtor is not required to file a modified plan when paying 100% of the Plan early.

DISCUSSION

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve Loan Modification filed by Anthony Land and Gwendolyn Land 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 court authorizes Anthony Land and Gwendolyn Land ("Debtor") to amend the terms of the loan with Federal Housing Administration being serviced by First Mortgage Corporation ("Creditor"), which is secured by the real property commonly known as 10758 Segovia Way, Rancho Cordova, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 109).

9. 16-26617-E-13 DPC-1 | **DARSEY/BESSIE VARNEDOE** **Gary Fraley** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-10-16 [17]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 10, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. Debtor cannot make the payments under the Plan or comply with the Plan. Debtor proposes to value the claim of United of Omaha Life Insurance in Class 2B, but has not filed a Motion to Value Secured Claim. Without a motion to value being granted and reducing the claim, the Plan will not complete in sixty months.

B. Debtor's Plan fails to provide for Wells Fargo Dealer Service's secured claim for which a 2010 Volkswagen Jetta (Co-owned with son) is collateral listed on Schedule D. While treatment of all secured claims is not required, failure to provide treatment could indicate that either Debtor cannot afford the payments called for under the Plan because they have additional debts or that the Debtor wants to conceal the proposed treatment of the Creditor.

C. The Debtor is self-employed with Final Touch Painting Company according to Schedule I and lists net income of $2,000.00, but Debtor has failed to attach a statement for the business showing gross receipts, ordinary and necessary business expenses, and total monthly net income.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of United of Omaha Life Insurance. The Debtor has failed to file a Motion to Value the Secured Claim of United of Omaha Life Insurance, however. Without the court valuing the claim, the Plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

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

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

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

A. provide a treatment that the debtor and secured creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. surrender the collateral for the claim to the secured creditor (11 U.S.C. § 1325(a)(5)(C)).

These three possibilities are relevant only if the plan provides for the secured claim, however.

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

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

The Debtor has failed to attach a statement for the business showing gross receipts, ordinary and necessary business expenses, and total monthly income to Debtor's Schedule I. Without the Debtor submitting statement for the business showing gross receipts, ordinary and necessary business expenses, and total monthly income , the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

10. 11-48321-E-13 DPC-3 | **FE PATACSIL Matthew Grech** | **OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, INC., CLAIM NUMBER 12 10-19-16 [104]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

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

The Objection to Claim of Navient Solutions, Inc. is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 12-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $12,241.47. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim for a governmental unit in this case is June 3, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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 a 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 deadline for filing a Proof of Claim in this matter was June 3, 2012. The Creditor's Proof of Claim was filed on June 30, 2016. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court 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 Navient Solutions, Inc., Creditor filed in this case by David Cusick, 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 to Proof of Claim Number 12-1 of Navient Solutions, Inc. is sustained, and the claim is disallowed in its entirety.

11. 11-48321-E-13 DPC-4 | **FE PATACSIL** **Matthew Grech** | **OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, INC., CLAIM NUMBER 13 10-19-16 [109]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

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

The Objection to Claim of Navient Solutions, Inc. is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 13-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $34,346.44. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is June 3, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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 a 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 deadline for filing a Proof of Claim in this matter was June 3, 2012. The Creditor's Proof of Claim was filed on June 30, 2016. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court 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 Navient Solutions, Inc., Creditor filed in this case by David Cusick, 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 to Proof of Claim Number 13-1 of Navient Solutions, Inc. is sustained, and the claim is disallowed in its entirety.

12. **11-48321-E-13** **FE PATACSIL** **OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, INC., CLAIM NUMBER 14**
DPC-5 **Matthew Grech** **10-19-16 [114]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

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

The Objection to Claim of Navient Solutions, Inc. is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $31,470.57. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is June 3, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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 a 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 deadline for filing a Proof of Claim in this matter was June 3, 2012. The Creditor's Proof of Claim was filed on June 30, 2016. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court 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 Navient Solutions, Inc., Creditor filed in this case by David Cusick, 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 to Proof of Claim Number 14-1 of Navient Solutions, Inc. is sustained, and the claim is disallowed in its entirety.

13. 11-48321-E-13 DPC-6 | **FE PATACSIL** **Matthew Grech** | **OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, INC., CLAIM NUMBER 15 10-19-16 [119]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

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

The Objection to Claim of Navient Solutions, Inc. is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 15-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $13,986.67. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is June 3, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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 a 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 deadline for filing a Proof of Claim in this matter was June 3, 2012. The Creditor's Proof of Claim was filed on June 30, 2016. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court 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 Navient Solutions, Inc., Creditor filed in this case by David Cusick, 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 to Proof of Claim Number 15-1 of Navient Solutions, Inc. is sustained, and the claim is disallowed in its entirety.

14. 11-48321-E-13 DPC-7 | **FE PATACSIL** **Matthew Grech** | **OBJECTION TO CLAIM OF NAVIENT SOLUTIONS, INC., CLAIM NUMBER 16 10-19-16 [124]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

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

The Objection to Claim of Navient Solutions, Inc. is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions, Inc. ("Creditor"), Proof of Claim No. 16-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $40,120.07. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is June 3, 2012. Notice of Bankruptcy Filing and Deadlines, Dckt. 13.

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 a 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 deadline for filing a Proof of Claim in this matter was June 3, 2012. The Creditor's Proof of Claim was filed on June 30, 2016. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim is sustained.

The court 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 Navient Solutions, Inc., Creditor filed in this case by David Cusick, 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 to Proof of Claim Number 16-1 of Navient Solutions, Inc. is sustained, and the claim is disallowed in its entirety.

15. 16-26026-E-13 JAMES BERRY — MOTION TO CONFIRM PLAN
MJD-1 Scott Sagaria — 10-20-16 [17]

Tentative Ruling: 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Amended Plan is granted.

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

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 4, 2016. Dckt. 26. The Trustee opposes confirmation on the basis that:

A. The Additional Provisions of the Plan call for a total of $540.00 paid through September 2016 and an additional payment of $540.00 due on or before October 25, 2016. The Debtor's petition was filed on September 9, 2016. The first plan payment pursuant to Section 1.01 of the Plan is due on the twenty-fifth day of each month beginning the month after the order of relief under Chapter 13.

The Trustee does not object to additional language in the Order Confirming Plan correcting the plan payment from $1,080.00 due through October 2016 to $540.00 due by October 25, 2016.

DISCUSSION

The Trustee's objections are well-taken. The Trustee indicates that the Additional Provisions of the Plan call for $1,080.00 to be paid into the Plan through October 2016, but only $540.00 will come due on or before October 25, 2016. The Trustee has provided evidence that the first payment was made in October 2016 (Dckt. 27), thus it appears that the reference to payments starting in September 2016 is a typographical error. That error can be corrected in the order confirming.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 20, 2016, as amended to be state that plan payments begin in October 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order, including the forgoing amendment, 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.

16.	**16-25332-E-13** **MET-1**	**STEPHEN/LESLEE FOURNIER** **Mary Ellen Terranella**	**CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.** **9-2-16 [18]**

APPEARANCE OF CHRISTINA O, AND ANY OTHER ATTORNEY FOR JPMORGAN CHASE BANK, N.A., REQUIRED AT THE HEARING (October 6, 2016 Order, Dckt. 41)

NO TELEPHONIC APPEARANCES PERMITTED FOR COUNSEL OF JPMORGAN CHASE BANK, N.A.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, creditor, and the Office of the United States Trustee on September 2, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of JP Morgan Chase Bank, N.A., "Creditor," is granted, and Creditor's secured claim is determined to have a value of $xxxx.

The Motion to Value filed by Stephen Fournier and Leslee Fournier ("Debtor") to value the secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 531 Buckeye Street, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $220,000.00 as of the petition filing date. As the owners, 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).

No Proof of Claim Filed

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

CREDITOR'S OPPOSITION

Creditor filed an opposition on September 20, 2016. Dckt. 23. The court first notes that the two-page opposition has appended to it: (1) a proof of service, and (2) a twelve-page exhibit. Creditor's counsel regularly appears in this and other courts in the Eastern District of California. Counsel is well aware of Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents that requires the motion, opposition, each declaration, exhibits (which exhibits may be combined into one document) and certificate of service to be filed as separate documents.

Even more concerning is that slapped as an improperly attached exhibit to the Opposition is what is stated to be a "Residential Broker Price Opinion." Creditor argues the "facts" set forth as to value from this Opinion. Unfortunately, no person is or has been willing to provide a declaration testifying to this "Opinion." Fed. R. Evid. 601, 602, 701, 702. In addition to having exempted itself from the Local Bankruptcy Rules, Creditor has also voided the Federal Rules of Evidence.

In reliance on the value stated in the unauthenticated Opinion attached as an exhibit, Creditor states there is substantial equity in the Property for Creditor. Based on the unauthenticated Opinion, Creditor argues the value of the Property, stating that the hearing (day of reckoning on the motion) should be continued.

In light of Creditor not being able to provide properly authenticated evidence in support of its arguments, the court has little belief that an unauthenticated further appraisal, for which no competent witness is able or willing to provide testimony, and a continuance would be a delay solely for the sake of delay.

OCTOBER 4, 2016 HEARING

At the hearing, Creditor requested time to proceed with discovery, and the court granted the request and continued the hearing to 3:00 p.m. on November 22, 2016. Dckt. 34. The court declared that no telephonic appearance would be permitted for Creditor at the continued hearing, and Creditor was required to file Supplemental Pleadings by October 31, 2016. Replies, if any, were set to be served on or before November 14, 2016.

The court ordered that Creditor's counsel shall address the deficiencies in the pleadings filed in Opposition to the Motion and provide the court with an explanation for the failure to comply with the Local Bankruptcy Rules, the Revised Guidelines for the Preparation of Documents, and the Federal Rules of Evidence in filing the Opposition and presenting "evidence" of the purported value of the Property at issue. A written response providing such explanation and how a law firm and attorneys regularly appearing in this court have filed such a pleading was ordered to be filed and served on the Chapter 13 Trustee, counsel for Debtor, and the U.S. Trustee on or before November 15, 2016, as well as Creditor's counsel addressing it at the continued hearing.

Then, the court ordered that Christina O, Creditor's counsel making the telephonic appearance at the October 4, 2016 hearing, shall appear in person at the November 22, 2016 hearing. Order Dckt. 34. The court orders that other attorneys of the Malcolm Cisneros Law Firm (Creditor's counsel) may appear at the hearing, but they must be in person, not telephonic.

The court suspended the provisions of Federal Rule of Civil Procedure 41(a)(1)(A) for this matter and ruled that the Motion may be dismissed by order of the court only.

STIPULATION

The parties filed a Stipulation on October 24, 2016, in which they agreed to continue the hearing to 3:00 p.m. on December 6, 2016, and extend Creditor's Supplemental Opposition deadline to November 7, 2016, and the reply deadline to November 21, 2016. Dckt. 40. The court approved the Stipulation on October 25, 2016. Dckt. 41.

CREDITOR'S SUPPLEMENTAL OPPOSITION

Creditor filed a Supplemental Opposition on November 7, 2016. Dckt. 55. Creditor opposes Debtor's valuation of the Property. An appraisal report was completed on October 27, 2016, which states that the value is $390,000.00 as of October 15, 2016. Creditor notes that the purported first priority lien is in the amount of $351,055.00. There being equity for a portion of Creditor's lien, Creditor asserts that the anti-modification provision of 11 U.S.C. § 1322(b)(2) applies to prevent any valuation of Creditor's secured claim.

CREDITOR'S COUNSEL'S RESPONSE

Malcolm Cisneros, A Law Corporation ("Creditor's Counsel") filed a Response to the Court's October 6, 2016 Civil Minute Order on November 15, 2016. Dckt. 64. Creditor's Counsel states that filing the certificate of service and exhibit as one docket was due to an oversight. Creditor's Counsel states that it has reviewed the Local Bankruptcy Rules and has taken steps to prevent the issue from occurring again.

Creditor's Counsel asserts that a broker's price opinion was filed only to show that Creditor had a good faith ground upon which to seek continuance of the Motion. Creditor's Counsel did not intend the broker's price opinion to be viewed as evidence upon which the court would rule substantively.

While it may be plausible that error occurred, the second part of the explanation does not square with the pleading filed by JPMorgan Chase Bank, N.A. The Opposition does not state, "Creditor believes that the property has a greater value than opined by Debtor. Creditor is obtaining a formal appraisal, having a broker's price opinion (copy filed as Exhibit X filed to show Debtor and the court the basis for Creditor's preliminary objection) that causes Creditor to believe a higher value exists."

Rather, the Objection states that: (1) Chase has obtained a Broker Price Opinion, (2) a copy of the Opinion is attached to the Opposition, and (3) there is significant equity in the property based on the Broker Price Opinion. It is clear in that the Broker Price Opinion is presented as "opinion evidence" to the court.

DEBTOR'S REPLY

Debtor filed a Reply to Creditor's Supplemental Opposition on November 21, 2016. Dckt. 71. Debtor emphasizes that while Creditor's appraiser stated that the value of the Property is $390,000.00, he also handwrote at line seven of his Declaration that the property was worth $370,000.00 at the time of filing the petition. *See* Dckt. 56.

Debtor obtained an appraisal as well, which valued the Property on the date of filing the petition at $347,000.00. *See* Exhibit A, Dckt. 73. Debtor asserts, therefore, that the Property is worth less than the value of the first mortgage, leaving no equity for Creditor's lien. Debtor moves to value Creditor's lien.

DISCUSSION

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

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

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

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

Creditor's real estate appraiser has now provided his declaration. Dckt. 56. He testifies that the property securing Creditor's claim had a value of $370,000.00 as of August 13, 2016, when this case was filed. Further, he believes that it has increased $20,000.00 in the two months after this case was filed.

Debtor has now filed a declaration of a real estate appraiser opining that the property has a value of $347,000.00 as of the commencement of this case on August 13, 2016. Dckt. 72. In his declaration, he identifies some specific condition issues that affect the value of the Property.

Both appraisers have filed and authenticated in their declarations their respective appraisal reports. Debtor's Appraisal Report, Dckt. 73; Creditor's Appraisal Report, Dckt. 57. In reviewing the appraisal reports, there are no common "comparable" properties used by the two appraisers. For the comparables used by Debtor's appraiser, adjustments ranging from $400 to $18,000 were made to the comparables. For Creditor's appraiser, the adjustments range from ($25,700) to $0.00. It appears that the two appraisers have chosen grossly different "comparable" properties to compare to the Property at issue.

The dispute concerns whether Creditor can assert the right to have its secured claim be paid in full as a secured claim or be relegated to unsecured status based on an 11 U.S.C. § 506(a)(2) valuation. *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). While there are "legal issues" to be addressed, this type of dispute should be grounded in economic reality.

Here, Creditor has not filed a proof of claim or other evidence of the amount owed, but argues in the Opposition that it is "approximately" $87,343.14. Dckt. 23 at 1:27–28. Creditor originally argued that it, in good faith, believed that the Property was worth $410,000.00 and directed the court to take an unauthenticated broker's price opinion as evidence of that value. *Id.* at 6–9. Now, when actually presenting evidence, the value is asserted by Creditor's expert to be $370,000, 10% less than previously asserted.

Debtor asserts in the Motion that Creditor's claim is approximately $84,502.00. Dckt. 18. This is the amount stated under penalty of perjury on Schedule D and is consistent with Creditor's argument of the amount of the secured claim. The court gives Creditor the benefit of the doubt and will use $87,343.14 as the amount of the claim.

Debtor then asserts in the Motion that the Property has a value of $220,000.00. *Id.*, p. 1:26–27, 2:1.5–3.5. Debtor then provides testimony under penalty of perjury as the owner of the Property that it has a value of $220,000.00. Declaration, Dckt. 20. Debtor's opinion of value appears to be grossly wrong, with Debtor's appraiser valuing it at $347,000.00 (57% higher than Debtor's opinion of value).

Debtor asserts that the debt secured by the senior lien on the property is $351,000.00. Creditor does no offer a different amount. Proof of Claim No. 1 filed by Wells Fargo Bank, N.A., the creditor with the claim secured by the senior lien, is in the amount of $347,331.40.

If Debtor's appraiser valuation is found to be persuasive, then there is no value in the property for Creditor's secured claim, and it would be relegated to general unsecured claim status. In the current proposed Chapter 13 Plan, Debtor provides for a 0.00% dividend to creditors holding general unsecured claims.

However, if Creditor's appraiser valuation is found persuasive, then there is some value in the Property for Creditor's secured claim, which would then preclude a valuation and bifurcation of Creditor's claim that is secured only by Debtor's residence. Creditor could then DEMAND THAT THE SECURED CLAIM BE PAID IN FULL!

Unfortunately, Debtor has demonstrated that they are so financially stretched that if put to that test, they could not make the additional payments on an $87,343.14 additional secured claim, which would then result in Creditor having the privilege of exercising its right to foreclose on the Property. The court estimates the financial benefit to creditor as follows:

Sale Price	$370,000
Payment of Senior Lien and Servicing it for Four Months While Foreclosure Pending	($357,500)
Foreclosure Costs	($15,000)
Maintenance and Security Costs During One Year of Ownership While Creditor Markets and Sells REO Property to Achieve FMV	($5,000)
Property Taxes	($5,000)
Est. Legal Fees Relating to Valuation Dispute and Evidentiary Hearing	($15,000)
Real Estate Commission and Closing Costs	($29,600)

Net Benefit to Creditor from Foreclosing and Selling Property	($57,100)

Creditor may argue that the Property will rise in value. It might, but then again REO property, which is unoccupied and subject to loss, damage, and vandalism may well not so appreciate.

Debtor may argue that Creditor should just give up and take nothing, allowing Debtor to pocket what may be some equity that exists for Creditor's claim. As one attorney was known to say, "if given the choice that my client gets nothing and your client gets something, or both our clients get nothing, we vote that both our clients get nothing."

Here, by Creditor's best calculation there is approximately $18,000.00 of "equity" in the property. If Debtor were to stipulate to a $12,000.00 secured claim and Creditor stipulate to bifurcate the balance, Creditor would get paid on $12,000.00. Over the sixty months of the Plan, that would increase the monthly plan payment by approximately $190.00 per month. From Debtor's $10,653.00 of Monthly Income (Schedule I, Dckt. 1 at 33) Debtor should be able to find $190.00. For this family of two persons, making

that adjustment could be to "necessary" and "reasonable" expenses of $8,688.00 (Schedule J, *Id.* at 35). Possible adjustment could be made in the $1,200 per month for food, $400 per month for entertainment, and $300 per month for clothing/laundry, to name just a few expense areas.

The court notes that Debtor and Creditor have doggedly fought over this $18,000.00 dispute, and it is likely that their combined legal and professional fees will exceed $30,000 on this issue after the evidentiary hearing. It appears that economic reality has taken a back seat to litigation desire.

Given that the two appraisals manage to slide in just under and just over the amount of the debt secured by the senior lien and that the two appraisers have chosen such diametrically opposed "comparables," the court cannot make a ruling on the value without the benefit of an evidentiary hearing and listening to, and assessing the credibility of the two experts.

The court sets this Contested Matter for an evidentiary hearing, with the following dates and deadlines:

A. Witness Lists for Debtor's and Creditor's respective cases in chief filed and exchanged on or before **xxxxxxxxxxxx, 2016**.

B. Evidence will be presented as provided in Local Bankruptcy Rule 9017-1.

C. Debtor lodge with the court and serve direct testimony statements on or before **xxxxxxxxxx, 2017**.

D. Creditor lodge with the court and serve direct testimony statements on or before **xxxxxxxxxx, 2017**.

E. Evidentiary Hearing Briefs and Evidentiary Objection shall be lodged with the court, electronically filed, and served on or before **xxxxxxxxxxx, 2017**.

F. Oppositions to Evidentiary Objections shall be lodged with the court, electronically filed, and served on or before **xxxxxxxxxxx, 2017**.

G. The Evidentiary Hearing will be conducted at **xxxxx, a.m. on xxxxxxxxx, 2017**.

17. 16-25332-E-13 STEPHEN/LESLEE FOURNIER
Mary Ellen Terranella

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
10-3-16 [24]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on October 3, 2016. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

JPMorgan Chase Bank, N.A., a Creditor holding a secured claim, opposes confirmation of the Plan. FN 1.

FN.1. The objecting party is reminded that the Local Rules require the use of a new Docket Control Number with each motion or objection. Local Bankr. R. 9014-1(c). Here, the objecting party failed to use a Docket Control Number. That is not correct. The Court will consider the objection, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(c)(l).

The creditor opposes confirmation on the basis that:

A. Debtor's Plan fails to propose to cure the pre-petition arrears owed to Creditor and fails to provide that post-petition monthly mortgage payments are tendered to Creditor.

B. Debtor filed a Motion to Value Secured Claim of Creditor. The motion seeks to value the Property at $220,000.00 and strip Creditor's junior lien. Creditor filed an Opposition to the Motion to Value Secured Claim disputing the Debtor's estimated value, believing that the value of the Property is greater than $220,000.00. Creditor states there is significant equity beyond the first lien on the property to provide for its claim.

The objecting creditor indicates that it holds a deed of trust secured by the Debtor's residence and states that the amount due and owing under the Promissory Note is approximately $87,343.14, and the pre-petition arrearage amount owed is $3,067.04. Unfortunately, Creditor has not filed a Proof of Claim or provided admissible evidence (e.g., a declaration made under penalty of perjury) in its pleadings of the amount of the pre-petition arrears. FN. 2. Without such, the court cannot determine if the Debtor's Plan does not, in fact, provide for the full curing of Creditor's arrears or whether post-petition monthly mortgage payments are required.

FN.2. The objecting party is reminded that the Local Rules require that every objection or motion be accompanied by evidence establishing its factual allegations and demonstrating that objecting party or movant is entitled to the relief requested. Local Bankr. R. 1001-1(g), 9014-1(d)(7).

The objecting creditor also indicates that the Debtor has filed a Motion to Value Secured Claim of property that the objecting creditor believes is worth more than the Debtor's valuation. This Objection to Confirmation of Plan is not the appropriate place to dispute Debtor's Motion to Value Collateral. The objecting party is reminded that every application, motion, contested matter, or other request for an order must be filed separately from any other request. Local Bankr. R. 1001-1(g), 9014-1(d)(1). The hearing on the Motion to Value Collateral has been continued to 3:00 p.m. on November 22, 2016. Dckt. 34.

STIPULATION

The parties filed a signed Stipulation on October 24, 2016. Dckt. 40. The parties state that there was a one-week delay in having the property appraised. Accordingly, the parties request that the hearing be continued to 3:00 p.m. on December 6, 2016, with Creditor filing supplemental opposition by November 7, 2016, and Debtor filing any reply by November 21, 2016.

NOVEMBER 1, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on December 6, 2016. Dckt. 54.

DISCUSSION

No additional pleadings have been filed in this matter since the November 1, 2016 hearing, and Creditor has not filed a Proof of Claim. Without a Proof of Claim, the court cannot determine if Creditor's claim is provided for by Debtor's Plan. Regarding the Motion to Value Secured Claim, the court has granted that Motion and resolved that portion of Creditor's Objection to Confirmation.

The court is denying confirmation based on the Chapter 13 Trustee's Objection to Confirmation. The court has set an evidentiary hearing on the Motion to Value the Creditor's secured claim.

The Creditor's Objection is sustained. In light of sustaining the Trustee's Objection, this is of little moment for Debtor. When addressing the Trustee's grounds for objecting in an amended plan, Debtor can also build in provisions for properly providing for the pending litigation with Creditor over the possible 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 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 the Objection to Confirmation is sustained.

18. **16-25332-E-13** **STEPHEN/LESLEE FOURNIER** **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Mary Ellen Terranella** **10-5-16 [27]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 5, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Debtor is $40.00 delinquent in plan payments to the Trustee. The next scheduled payment of $1,965.00 is due October 25, 2016. The Debtor has paid $1,925.00 into the Plan to date.

B. The Debtor is not entitled to Chapter 13 relief because the Debtor is over the unsecured debt limit. Debtor lists unsecured debts as $328,573.00. However, the Trustee calculates total unsecured debts of $595,721.00 based on:

1. Debtor's Schedule D, which lists $90,516.00 for a second deed of trust to Chase and Merriwest C.U. for a 2014 Ford Escape;

2. Debtor's Schedule E/F lists:

a. Priority unsecured tax debts totaling $76,612.00,

b. Student loans of $321,591.00, and

c. General unsecured debts of $107,002.00.

C. Debtor unfairly discriminates against creditors. The Plan proposes to pay 0% to unsecured creditors. Debtor Leslie Fournier testified at the First Meeting of Creditors held on September 29, 2016, that she is making a $151.50 monthly student loan payments directly. Debtor's Schedule J does not disclose that expense. Where Debtor admits that the student loan payment is hidden in the budget, creditors do not have the opportunity to object to the direct payment to an unsecured debt.

D. Debtor's Plan may not be the Debtor's best effort. Debtor is above median income and proposes to pay 0% to general unsecured creditors.

1. The Trustee objects to the following deductions on Form 122C-2:

a. $489.00 for optional telephone services. Debtor's separate budgets list $165.00 for telephone expenses for Debtor Stephen Fournier and $0.00 for Debtor Leslee Fournier. According to the form, this deduction is not to be used for basic home telephone service, internet, cell phone, or self-employment expenses;

b. $37.00 for additional food and clothing expense. No proof of the expense is provided as required by the form;

c. $125.00 for charity expenses. No charitable expenses are disclosed on the Debtor's budget or on the Business Income and Expenses; and

d. $2,764.00 for Debtor Stephen Fournier's separate living expenses. Debtor has claimed standard Internal Revenue Service allowable living expense deductions for a household of two persons on lines 6, 7g, 8, 9, 11, 12, and 13a–f. The Trustee objects to Debtor taking additional deductions for the separate household expenses when already claiming expenses for a household of two persons.

Adjusting the form for these expenses results in monthly disposable income of $3,393.98. Based on the applicable commitment period of sixty months, unsecured creditors would be entitled to receive $203,638.80. The Plan proposes to pay $76,612.00 to priority unsecured creditors and a 0% dividend to general unsecured creditors.

2. Debtor's separate budgets both list a food expense of $600.00 on Schedule J. The Internal Revenue Service Allowable Living Expenses National Standard for food for one person is $307.00 per month. The Trustee requests proof that Debtor actually has these expenses above the national standard allowance.

NOVEMBER 1, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on December 6, 2016. Dckt. 53. The court set November 8, 2016, as the deadline to file and serve any supplemental objections. Replies were to be filed and served by November 22, 2016.

TRUSTEE'S SUPPLEMENT TO OBJECTION

The Trustee filed a Supplement on November 8, 2016. Dckt. 59. The Trustee summarizes that he objected on four grounds:

A. Delinquency,

B. Eligibility based on unsecured debt,

C. Student loan treatment, and

D. Not best effort.

The Trustee states that Debtor is now current. So, the delinquency objection has been resolved. As to the unsecured debt, the Trustee notes that Debtor has filed Amended Schedules that reflect the debt as contingent for a lesser amount. *See* Dckt. 42. The Trustee has filed a Motion to Dismiss based upon delinquency and eligibility, and Debtor has opposed revealing that Debtor has been in an income-based repayment plan since 2007.

At this time, the Trustee is not certain if the student loan debt should be considered contingent for purposes of eligibility. The monies are owed now, and a contingency may occur so that the debt will be reduced—completion of the income-based repayment plan. That possible contingency appears to be pending at the time of the bankruptcy filing.

The Trustee raises an issue of unfair discrimination against unsecured creditors. Debtor's Plan does not classify the student loan payments separately, and no clear expense item appears on Schedule J for it, but Debtor has stated that she is paying it at $151.50 per month. In a sixty-month plan, that will result in a $2.59 payback (based on $9,090.00 paid on $351,591.00). General unsecured claims are to receive 0% under the Plan, when they would need to receive $1,994.36 to be paid the same percentage as the student loan, which would require an increased plan payment by $37.00 per month.

The Trustee illustrates that Debtor has not presented a Schedule J-2 that shows the student loan expense, a copy of the current income-based repayment plan, or sufficient documentation that the court can

determine if the income-based repayment plan will remain in plan and available for the remainder of the Plan.

DEBTOR'S RESPONSE TO TRUSTEE'S OBJECTION

Debtor filed an Opposition to the Trustee's Objection on November 22, 2016. Dckt. 75. Debtor confirms that the delinquency objection has been resolved. Debtor states that Schedule F has been amended to reflect the student loan debt as contingent, which Debtor expects to be the case throughout the term of the loan because Debtor has never not qualified for the plan (measured by annual verifications).

To address the Trustee's allegation of unfair discrimination against unsecured claims, Debtor proposes to raise plan payments by $39.00.

Debtor states that she attached a Schedule J-2 (Exhibit A, Dckt. 77) showing that the student loan is paid as a business expense. Debtor does not have the original income-based repayment plan approval, but she has attached a Payments and Billing Statement from Cornerstone—the loan servicer—(Exhibit B, Dckt. 77), Payee Details for Department of Education Cornerstone Loan Services showing recent payments (Exhibit C, Dckt. 77), and a printout from Federal Student Aid showing the history of her student loans (Exhibit D, Dckt. 77).

Debtor justifies the $489.00 per month telephone expense that the Trustee objected to by stating that it is necessary for long distance expenses, Debtor Stephen Fournier's work cell phone, and job-related internet access. The Trustee also objected that an additional $37.00 food and clothing expense was not supported by independent documentation, and Debtor states that it covers professional clothing and dry cleaning expenses for work.

Debtor states that the charity expenses are included in Debtor's discretionary expenses. Debtor Leslee Fournier donates $500.00 per year, or $42.00 per month, and Debtor Stephen Fournier donates $85.00 per month.

While the Trustee objects to Debtor Stephen Fournier's separate living expenses, Debtor explains that they have been separated for more than three years and did not have an ability to alter the means test through the software they used. Debtor manually recalculated the means test and received a result showing that unsecured claims should be paid $38.98 per month. As mentioned before, Debtor has agreed to increase plan payments by $39.00 per month.

Debtor explains that the $600.00 per month expense for food and household supplies is caused because Debtor Stephen Fournier maintains a physically demanding job and must eat well, and Debtor Leslee Fournier travels several days each week, which necessitates eating out. Debtor has provided various food and grocery shopping receipts to verify these expenses to the Trustee.

Debtor requests that the Objection to Confirmation be overruled.

DISCUSSION

The Trustee's objections are well-taken.

The Trustee opposes on the basis that Debtor is over the unsecured debt limit, disqualifying the Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, unsecured debts" of less than $394,725.00 may be a debtor under Chapter 13. Here, the Debtor's Amended Schedule E/F lists $36,360.00 in contingent unsecured debt.

Because the Debtor has the right to pay the lower amount on the student loan, the court uses that amount to compute the § 109(g) debt limits in this case.

The Trustee also opposes confirmation due to the Debtor's unfair discrimination to unsecured creditors. Debtor Leslee Fournier testified at the First Meeting of Creditors that she is directly paying a monthly student loan payments of $151.00; however, Debtor failed to disclose this expense on Schedule J. By not disclosing this payment, Debtor has unfairly discriminated against other unsecured creditors by foreclosing them from objecting to the direct payment of an unsecured debt. This is cause to deny confirmation. 11 U.S.C. § 1322(a)(3), (b)(1).

Debtor has addressed this concern, however, by proposing to increase plan payments by $39.00 per month.

The Trustee also offers evidence that the Plan is not Debtor's best effort based on Debtor's Statement of Current Monthly Income and on Schedule J. Debtor's Statement of Current Monthly Income (Form 122C-2) appears to make deductions for work-related phone usage. Debtor deducts $489.00 for optional telephone services on Form 122C-2 but only lists $165.00 in total for telephone services on Debtor's separate Schedule J. According to the Form 122C-2, the deduction for optional telephone services is for:

> The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer. Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Official Form 122C-1, or any amount you previously deducted.

Further, while Debtor deducts additional food and clothing expenses of $37.00, the Form states "[y]ou must show that the additional amount claimed is reasonable and necessary." Debtor has provided information that the amount is for professional clothing and dry cleaning costs. Next, Debtor deducts charitable expenses of $125.00, and following the Trustee's objection, discloses that the amounts are included in discretionary expenses. Debtor Stephen Fournier lists separate living expenses of $2,764.00; however, Debtor claimed standard Internal Revenue Service allowable living expense deductions for a

household of two persons on lines 6, 7g, 8,9, 11, 12, and 13a–f. With the Debtor already claiming expenses for a household of two persons, a deduction for Debtor Stephen Fournier's further separate living expenses is not appropriate. The mere conclusion that Debtor Stephen Fournier needs more money is not persuasive or credible.

Finally, the Trustee objects to Debtor's food expense as listed on their separate Schedules J. Each Debtor lists an expense for "Food and housekeeping supplies" in the amount of $600.00. With the National Standard for food for one person being $307.00 per month, the Debtor must prove that those food expenses actually occur to have expenses so far above the national standard allowance. Debtor has provided receipts verifying that such expenses do occur because of healthy eating and travel-related dining. However, while choosing to maintain such food life-style is shown, it has not been shown that this is reasonable for either debtor.

Accounting for the removal of separate living expenses, Debtor may have disposable income of at least $2,764.00. That would allow unsecured creditors to be paid $165,840.00 through the Plan, rather than the current proposed $76,612.00 to only priority unsecured creditors.

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

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

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

19.	**16-27632-E-13 PSB-1**	**CHARLES JACKSON, AND PAMELA JACKSON Pauldeep Bains**	**MOTION TO EXTEND AUTOMATIC STAY 11-22-16 [8]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 22, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied without prejudice.

Charles Jackson and Pamela Jackson ("Debtor") seeks 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 the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-28836) was dismissed on November 10, 2016, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-28836, Dckt. 65, November 10, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was not able to become current on plan payments.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 29, 2016. Dckt. 17. The Trustee is uncertain that Debtor has met the evidentiary requirements of showing a change in circumstances. The delinquency in the prior case was $18,800.00, and Debtor has not provided an accounting for how that

money was used other than to say "we had several issues with our car that cost lots of money." The Trustee's review of Schedule B does not disclose a vehicle with a value of more than $15,000.00, and Schedule D discloses two vehicles and a motorcycle. Each debt on Schedule D is greater than the value reported. Debtor has not proposed to value any debt securing the vehicles, and the most recent model year listed for a vehicle is 2011.

The Trustee notes that the proposed plan payment is $6,163.08, down from $6,600.00 in the previous case. Debtor states that contributions to a 401k have ceased, but Debtor has not provided what amount has ceased. Schedule I discloses that a contribution of $466.55 per month is made to Fidelity for Debtor Pamela Jackson.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

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

In re Elliot-Cook, 357 B.R. at 814–15.

Here, Debtor has hinted that there were vehicle issues during the prior case that caused Debtor to fall too far behind on plan payments to become current, but Debtor has not provided clear evidence as to how much was spent and for what purposes. Additionally, Debtor has not been clear about what 401k contribution has ended and about how much that contribution was worth. Without a complete picture of Debtor's finances, the court is not able to evaluate whether Debtor is prosecuting this case in good faith and whether Debtor's circumstances have changed enough that Debtor can prosecute a proposed plan to confirmation.

This is not a case where Debtor is a borderline, poverty-level income Debtor. The gross monthly income for Debtor is $15,066.55. Schedule I, Dckt. 13. This is consistent with the income in Debtor's prior case. Debtor defaulted in the $6,600.00+ per month payments in the prior case beginning in August 2016. Debtor filed the current case on November 11, 2016. Though over $19,000.00 of projected disposable income went into Debtor's hands in August through the November 11th filing, none of it is credibly accounted for. On Schedule B, Debtor reports having only $1,100.00 in bank accounts. Dckt. 13 at 6.

A declaration stating "during our last case we had several issues with our car that cost lots of money (apparently more than $19,000)" is not sufficient to rebut the presumption of bad faith. In many respects, it strengthens the presumption of bad faith. It may be that the money was lost to gambling. Not a good answer, but one that could show human error. Or the $19,000.00 may be hidden with a family member or friend, showing more bad faith. The court has not been presented with credible evidence of where the money, more than $19,000.000 has gone over a three-month period.

The Debtor has not 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 denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

20. **16-27135-E-13** **MARY HAWTHORNE** **MOTION TO VALUE COLLATERAL OF**
HLG-1 **Kristy Hernandez** **BOSCO CREDIT, LLC**
11-4-16 [11]

Final Ruling: No appearance at the December 6, 2016 hearing is required.

Debtor having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on November 23, 2016, Dckt. 20; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Trustee; the Ex Parte motion is granted, Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Secured Claim of Bosco Credit, LLC filed by the Debtor having been presented to the court, the Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 20, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Debtor's Motion to Value Secured Claim of Bosco Credit, LLC is dismissed without prejudice.

21. 14-26838-E-13 PSB-3

TERRY HAMILTON AND NICHOL ARANDA
Pauldeep Bains

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BAINS LEGAL, PC DEBTORS' ATTORNEY(S)
10-27-16 [84]

Final Ruling: No appearance at the December 6, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 27, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 for Allowance of Professional Fees is granted.

Pauldeep Bains, the Attorney ("Applicant") for Nichol Aranda and Terry Hamilton, the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 29, 2016, through October 26, 2016. The order of the court approving employment of Applicant was entered on July 12, 2016. Dckt. 52. Applicant requests fees in the amount of $2,430.00 and costs in the amount of $43.12.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, entered a statement of non-opposition on November 1, 2011.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including a successful Motion to Incur Debt and Motion to Modify Plan. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 1.2 hours in this category. Applicant assisted Client with substitution of attorney, filing documents, providing client with orders of the court, and email communications.

Motion to Incur Debt: Applicant spent 4.0 hours in this category. Applicant drafted and the Motion to Incur Debt as well as filed a reply to the Trustee's objection.

Motion to Modify: Applicant spent 5.5 hours in this category. Applicant drafted the Motion to Modify and corresponding documents.

Motion for Compensation: Applicant spent 4.0 hours in this category. Applicant prepared the Motion for Compensation.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Pauldeep Bains	8.1	$300.00	$2,430.00
No Charge	6.6	$0.00	$0.00
Total Fees For Period of Application			$2,430.00

Costs & Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $43.12 pursuant to this application, although the task billing shows $40.12.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage	$0.68	$23.12
Paper	$0.05	$17.00
Total Costs Requested in Application		$40.12

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,430.00 are approved and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Costs & Expenses

The First and Final Costs in the amount of $23.12 are approved and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Attempting to Recover Inappropriate Costs

Applicant is expected as part of its hourly rate to have the necessary and proper office and business support to provide these professional services to Client. These basic resources include, but are not limited to, basic legal research (such as online access to bankruptcy and state laws and cases); phone, email,

and facsimile; and secretarial support. The costs requested by Applicant include sheets of paper. No information has been provided to the court by Applicant that these cost items were extraordinary expenses that one would expect for Applicant providing professional services to Client to be charged in addition to the professional fees requested as compensation. The court disallows $17.00 of the requested costs.

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

Fees	$2,430.00
Costs and Expenses	$23.12

pursuant to this Application in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Pauldeep Bains ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Pauldeep Bains is allowed the following fees and expenses as a professional of the Estate:
>
> Pauldeep Bains, Professional Employed by the Chapter 13 Debtor
>
> Fees in the amount of $2,430.00
> Expenses in the amount of $23.12
>
> **IT IS FURTHER ORDERED** that costs of $17.00 are not allowed by the court.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

22. **16-26838-E-13** **KATRINA CULVERSON** **CONTINUED MOTION TO EXTEND**
SDH-1 **Scott Hughes** **AUTOMATIC STAY**
10-17-16 [10]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

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, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Katrina Culverson ("Debtor") seeks 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 the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 16-24458) was dismissed on October 13, 2016, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 16-24458, Dckt. 50, October 13, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

TRUSTEE'S OPPOSITION

David Cusick, Chapter 13 Trustee, filed an Opposition on October 18, 2016. Dckt. 15. Trustee asserts that Debtor's current filing is incomplete as Debtor has yet to file the Schedules, Statement of Financial Affairs, and Form 122C-1 Statement of Monthly Income. Trustee requests that this Motion be denied unless the documents are filed.

NOVEMBER 1, 2016 HEARING

At the hearing, the court heard arguments of counsel and decided to granted the Motion on an interim basis through 12:00 p.m. on December 9, 2016. Dckt. 28. The court continued the hearing on the Motion to 3:00 p.m. on December 6, 2016, and required that any supplemental pleadings be filed on or before November 23, 2016. Dckt. 30.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a Supplemental Declaration on November 10, 2016. Dckt. 31. Debtor reaffirms that she is trying to recover her missing money orders, and she has been informed that another month may pass before she receives them back. Debtor states that she has amended Schedule B to reflect the missing money orders.

Regarding the September 25, 2016 payment due in the last case, Debtor states that she mailed the payment "by priority U.S. mail with a tracking number," which she believes the Trustee received on October 12, 2016. After the prior case was dismissed, Debtor received a refund from the Trustee of $1,872.16 on November 2, 2016. Debtor states that she has amended her Schedules to reflect that refund as an asset.

Debtor states that she does not have $12,248.00 in disposable income. When her case was dismissed on October 12, 2016, she chose to use what would have been the October plan payment to pay for vehicle repairs and for her attorney to file another bankruptcy case.

Debtor points out that the alleged $502,230.00 in worker's compensation was a typographical error. The amount is $50,232.00 received as worker's compensation in 2014. Since then, Debtor has received disability payments and medical retirement income. Debtor is pursuing a worker's compensation claim, but she does not know what it may be worth. She has amended Schedule B to show the asset with an unknown value.

Debtor states that she has amended her Plan to pay 100% to unsecured claims because she wants to emphasize to the court that she is acting in good faith. Debtor wants the automatic stay to be in effect to protect her home and her vehicle.

DISCUSSION

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J.

201, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

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

Elliot-Cook, 357 B.R. at 814–15.

Dismissal of Prior Case

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why Debtor failed to make plan payments in the prior case. Debtor's testifies under penalty of perjury that on August 23, 2016, two days before the first payment was due on the plan in the prior case, she mailed six money orders, totaling $3,062.00 to the Trustee, but that the Trustee asserts that he never received them. Declaration, Dckt. 12. She further states that she "diligently" tried to recover the money, but that it had not been recovered by the time Trustee moved to dismiss the prior case.

Then, on September 16, 2016, Debtor's father suffered a heart attack, necessitating her traveling to Oregon to be with him. *Id.* On September 26, 2016, Debtor returned to Sacramento and contacted her attorney about the motion to dismiss. At that time she states that she tried to make a payment, but:

> "Unbelievably, the package also got lost in the mail, but because I had a tracking number this time, I am able to track down the other missing payment. It was scheduled to arrive at the trustee's office on October 12, 2016, the day scheduled for the motion to dismiss the case. I do not know if the trustee received that payment. My attorney advised me that it will probably be returned to me if the case has been dismissed."

Id., ¶ 6.

Rather than addressing the defaults and recovering the monies to fund the Plan, Debtor concludes:

> "Because of the circumstances, and after discussing the options with my attorney, I decided to let the first case be dismissed. Rather than trying to catch up on the payments in the old case, I believe it would be easier for me and the trustee if I started over again with a new case."

Id., ¶ 7. Debtor states that now she intends to drop payments off at the Trustee's office rather than mail them to the Trustee.

Debtor concludes by testifying that her continuing in bankruptcy is important "to stop a foreclosure pending on my residence and to make sure my GMC Yukon is not repossessed." *Id.* ¶ 10.

The prior Chapter 13 case was dismissed on October 13, 2016. 16-24458; Order, Dckt. 50. It was dismissed based on Debtor's intentional choice to allow it to be dismissed. Debtor then filed this current case on October 14, 2016.

The Debtor's testimony and strategic decision to let the first case be dismissed and not try to recover the "missing" money orders is troubling. The Chapter 13 Trustee filed the motion to dismiss the prior bankruptcy case on September 28, 2016, two days after Debtor returned from Oregon. *Id.*; Motion, Dckt. 42. At that point, knowing that a plan payment had come due on September 25, 2016, Debtor and her counsel did not have Debtor drive the current payment over to the Trustee, but instead, Debtor waited and then used a procedure that would not have the payment (if actually sent) not received by the Trustee until October 12, 2016—two weeks after Debtor returned from Oregon. Why Debtor, in good faith, would intentionally schedule the payment to be received at the Trustee's office on October 12, 2016, most likely after the 10:00 a.m. hearing for the motion to dismiss that both she and her attorney had notice of is unaddressed.

As testified to by the Trustee in the prior case and admitted by the Debtor, she has not made the required $3,062.00 plan payments for August, September, and October 2016, pursuant to the prior plan. In fact, Debtor now testifies that she spent the October payment and that the money orders were "lost" or may not have been received by the Trustee. Thus, it appears that the first month's payment in this case should be more than one month's plan payment.

Debtor still offers no explanation as to where portions of the $12,248.00 are, even though she states in her Supplemental Declaration that part of it has been spent on vehicle repairs and attorney's fees. Debtor has not stated what amount remains. On Amended Schedule B filed under penalty of perjury in this case, only $4,934.16 of the $12,248.00 is unaccounted for by Debtor. Dckt. 39. The Debtor still lists having only $163.00 in a checking account and no other bank or savings accounts. Under penalty of perjury, $7,313.84 of the $12,248.00 has just "disappeared," no explanation fully provided by Debtor.

The court is still troubled by the incomplete, nonspecific "I'm trying to recover $12,000.00," with no documentation and specifics about what Debtor is doing. Debtor is represented by counsel. Nothing is stated as to what counsel is doing to recovery the $12,000.00 in property of the estate to be paid into the plan. Based on the evidence presented, the court infers that Debtor (possibly in a panic) has used the $12,000.00 for some other purpose. No receipts for money orders have been provided to the court. No bank records documenting the purchase of the money orders has been provided. No confirmation from the company issuing the money orders has been provided showing that the money orders were not negotiated or if negotiated, who did so in the name of the Chapter 13 Trustee (and that such person has been reported to the U.S. Attorney).

While Debtor has explained that the Worker's Compensation payment was $50,230.00, no information is provided as to where that $50,000.00 has gone. The Schedules in the prior Chapter 13 case are also devoid of any information concerning what has happened to the $502,320.00 (or $50,232.00). 16-24458; Dckt. 9. As in this case, Debtor stated under penalty of perjury that in the two years prior to the filing of the bankruptcy cash she had not made any gifts or in the one year prior suffered any losses in excess of $600.00. 16-24458; Statement of Financial Affairs Parts 5 and 6, Dckt. 14.

Denial of Motion to Extend Automatic Stay

Congress has provided that pursuant to 11 U.S.C. § 362(c)(3)(A), the automatic stay shall terminate as to the debtor thirty days after the filing of a second bankruptcy case within a year of a dismissal of a prior bankruptcy case. However, the debtor may obtain an order extending the automatic stay so it does not terminate as to the debtor by rebutting the statutory presumption that the second bankruptcy case has been filed in bad faith. 11 U.S.C. § 362(c)(3)(B). Debtor must show that the second case was filed in good faith and rebut the presumption of bad faith by "clear and convincing evidence."

Here, Debtor has failed to rebut the presumption of bad faith. Rather, Debtor has demonstrated that she elected to allow the first case to be dismissed and has failed to account for all of the projected disposable income that should be available to fund the plan. Debtor's Statement of Financial Affairs (unamended) also raises a serious question as to the location of more than one-half of a million dollars of income Debtor received in 2014, less than two years prior to the Debtor starting the filing of her bankruptcy cases in the summer of 2016.

Debtor elected, as part of a legal strategy to have the prior case dismissed, ensuring such by not responding to the Motion to Dismiss (even though she states under penalty of perjury that she mailed cashier's checks scheduled to be delivered on October 12, 2016, to the Trustee to prevent the dismissal of the case). That testimony is not credible.

The Motion is denied, and the court does not extend the automatic stay as provided in 11 U.S.C. § 362(c)(3)(B). FN.1.

FN.1. As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay terminates **as to the Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4) Congress expressly provides that the automatic stay never goes into effect **in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate), and the bankruptcy case. While terminated as to the Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only the Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied, and the court does not extend the automatic stay as to the Debtor, which shall terminate as to the Debtor by operation of law pursuant to 11 U.S.C. § 362(c)(3)(A). The court does not make any

order affecting the automatic stay as it exists pursuant to 11 U.S.C. § 362(a) for the bankruptcy estate and property of the bankruptcy estate.

23. 13-20939-E-13 TIMOTHY/TAMARA MENEBROKER
George Burke

CONTINUED MOTION TO DISMISS CASE
9-19-16 [75]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 24, 2016. By the court's calculation, 10 days' notice was provided.

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 offer 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. At the hearing ----------.

The Motion to Dismiss Case is denied.

This Motion to Dismiss the Chapter 13 Bankruptcy case of Timothy Menebroker and Tamara Menebroker ("Debtor") has been filed by Co-Debtor Tamara Menebroker ("Movant"). Movant seeks dismissal of the Chapter 13 bankruptcy case pursuant to 11 U.S.C. § 1307(b) and Federal Rule of Bankruptcy Procedure 1016 and states that her request is being made in good faith.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on September 26, 2016. Dckt. 78. The Trustee makes the following points:

A. The Trustee is not sure who prepared the request. While submitted by Debtor, the Motion contains various citations to legal authority and appears in a format that does not match that used by Debtor's Counsel of Record.

B. The request sought by Debtor requires a hearing because Co-Debtor Tamara Menebroker does not have the authority of the joint debtor to dismiss the case yet.

C. The Debtor may still modify the Plan, but must clarify the status of the decedent joint debtor. The Trustee needs to know how $37,406.87 was spent that was received by Co-Debtor Tamara Menebroker after the joint debtor passed away.

D. Co-Debtor Tamara Menebroker declared that she no longer has any of the proceeds received after the death of the joint debtor, but she did not estimate what amounts were spent on expenses other than $6,688.00 in taxes. She cited to expenses for:

1. Funeral expenses,

2. Cell phones from T-Mobile,

3. Car repairs,

4. Veterinarian bill,

5. An increase in food expenses because of eating out, and

6. Supporting a twenty-one year old daughter at Sacramento State and a twenty-five year old son looking for work.

Where she proposed a modified plan with a payment reduced by $534.00 per month, presumably she has spent some of the proceeds on the plan payments that were at $1,333.00. If she has the same accounts with Safe Credit Union, she can produce statements to show how the remaining $28,048.87 in proceeds were spent.

E. Co-Debtor Tamara Menebroker is current under the last modified plan that was proposed but denied confirmation (Dckt. 54). Under the confirmed Plan, she is delinquent $3,201.00. Attorney's fees paid to the prior attorney were $4,000.00 with $1,450.00 paid prior to filing the petition and $2,550.00 paid through the Plan. Trustee has disbursed $2,550.00 in attorney's fees. The Plan is currently in month forty-four (44), and the Trustee has paid a total of $51,851.00 to date.

OCTOBER 4, 2016 HEARING

At the hearing, Debtor's new counsel appeared and argued for dismissal of the case, stating that Debtor wants to get the bankruptcy process behind her to obtain closure (after the death of her husband).

Dckt. 84. Counsel argued that whatever benefits were received could be exempted and that some of the monies received were gifts, not benefits or insurance.

Counsel and Debtor did not provide the court with evidence to support such contentions. The court continued the hearing to 3:00 p.m. on December 6, 2016, to afford Debtor's counsel time to properly present his client's arguments and supporting evidence. Dckt. 86.

The court ordered Debtor's counsel to file and serve supplemental pleadings and evidence in support of the Motion on or before November 3, 2016. Opposition was scheduled to be filed and served on or before November 17, 2016, and Replies, if any, were to be filed and served on or before November 23, 2016.

DEBTOR'S REQUEST FOR DISMISSAL ("GTB-1")

Whether Debtor and her new counsel are confused as to the court's ruling at the October 4, 2016 hearing, the court cannot tell, but Debtor and her new counsel have decided to ignore the court's ruling continuing this matter.

On October 25, 2016, Debtor filed a new Request for Dismissal, as though a prior one had not been filed already. Debtor did not label it as a supplemental pleading as the court had ordered. Debtor proceeded with a new Motion. Adding to the confusion for the court and other interested parties is that Debtor neither noticed a hearing for the renewed Motion nor served it on anyone.

Debtor's latest Motion (Dckt. 88) and the prior one that was supposedly filed in *pro se* (Dckt. 75) look very similar, and the court suspects that Debtor's counsel assisted with the prior motion without taking credit for it. If that is true, then Debtor's counsel would be aware that a Motion to Dismiss had been filed already and that there would be no reason to file a new one as though the other did not exist.

The new Motion (Dckt. 88) asserts the same grounds under 11 U.S.C. § 1307(b) and Federal Rule of Bankruptcy Procedure 1016 as the last one did. The Motion states is based on the ground "that Debtor has not acted in bad faith in this matter and that she does not request dismissal as any sort of abuse of process . . . ."

Debtor states that she would not qualify for Chapter 7, and she states that she has acted in good faith as shown by the following:

A. Debtor paid $51,851.00 in plan payments.

B. Debtor promptly notified her attorney of her husband's death and the anticipated receipt of death benefits.

C. Debtor provided all of the SAFE Credit Union bank statements to the Trustee to account for the death benefit money.

D. Debtor admits spending the death benefit money, but respectfully requests that the court consider as mitigating factors that $25,000.00 of it is exempt, that $6,688.00 of the non-exempt portion was paid to priority tax debts leaving $1,321.49 at issue here, and that Debtor was distraught by her husband's death and was not thinking clearly when she spent the death benefits between December 2015 and April 2016.

E. Debtor made an accounting of the death benefit money.

F. Debtor denies transferring any of the death benefit money to family members other than in the ordinary court of supporting her kids and their college costs.

Debtor states that she exempts $25,000 of the death benefit pursuant to California Code of Civil Procedure § 703.140(b)(5), and she ignores the balance of the monies that would be non-exempt (assuming Debtor could properly claim an exemption in diverted assets). Debtor states that this case would be a "no asset case" in Chapter 7. Additionally, conversion of this case to Chapter 7 would not affect the priority of her post-petition tax debt, and a Chapter 7 Trustee would have paid the $6,688.00 amount just as Debtor did. Debtor contends that the remaining $1,321.49 "is relatively inconsequential."

TRUSTEE'S RESPONSE

The Trustee filed a Response on November 16, 2016. Dckt. 91. First, he notes that Debtor has filed a duplicate Motion to Dismiss to the one filed earlier. The Trustee also notes that the new Motion was not noticed.

As a joint case with no party substituted for the deceased debtor, the Trustee is not sure if the Debtor can dismiss the case according to 11 U.S.C. § 1307(b). The Trustee suspects that the court could dismiss the case under 11 U.S.C. § 1307(c), though.

The Trustee notes that Ally Financial may be owed additional interest on two vehicles if this case does not proceed under Chapter 13.

The Trustee notes that the Debtor can propose a modified plan, provided that a party is substituted for the deceased debtor.

The Trustee notes that a Motion to Substitute for the Decedent Debtor was denied because Debtor had not accounted for where $37,406.87 in death benefit money had gone. While Debtor indicates that all SAFE Credit Union bank statements were provided to the Trustee, the Trustee counters that he has not received any such statements.

Lastly, the Trustee states that Debtor is delinquent $4,534.00 under the confirmed Plan.

DEBTOR'S REPLY

Debtor filed a Reply on November 22, 2016. Dckt. 94. FN.1. Debtor states that her counsel has now provided (though previous pleading stated such statements had already been provided) the SAFE Credit

Union bank statements to the Trustee; he had not done so yet because he assumed that Debtor's prior attorney had done so.

FN.1. Debtor's Counsel is reminded that Local Bankruptcy Rule 9014-1(d)(3) & (4) requires a party to file a separate notice, and Local Bankruptcy Rule 9014-1(e)(1) requires service of all pleadings. Failure to comply with the Local Bankruptcy Rules or an order of the court is a ground, by itself, to deny a motion. L.B.R. 1001-1(g).

Debtor responds to the Trustee's statement that Debtor may owe additional interest to Ally Financial by stating that such a scenario actually favors dismissal of the case as being in the best interest of creditors because there likely will be no non-exempt equity in the vehicles available for liquidation in a Chapter 7.

Debtor argues that nothing in the Trustee's Response points to bad faith or abuse of process. Additionally, Debtor argues that the Trustee has not said anything that shows that the $25,000.00 exemption was improper or that there is only $1,321.49 at issue here.

DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999)).

Debtor has not filed a Supplemental Pleading as the court required. *See* Dckt. 86. Debtor has not noticed or served its improperly filed new Motion. Debtor did not serve its Reply to the Trustee's Response. In this case, Debtor and Debtor's counsel have shown a disdain for following the rules established the court and the orders it issues.

Debtor's new Motion largely restates what had been stated in the original Motion, but it also introduces problems for the Debtor. Debtor admits to spending 37,406.87 received as death benefits between December 2015 and April 2016.

Grounds Stated in *Pro Se* Request for Dismissal

In the request, Debtor states that in light of her husband's recent death and the court denying her motion to modify the plan, this surviving Debtor cannot reasonably afford the plan payments. Therefore, this surviving Debtor is seeking closure and moving on with her life by dismissing this case and then filing a new Chapter 7 case.

Denial of Prior Motion to Modify

The court thoroughly reviewed the grounds for denying the motion to confirm the modified plan. Civil Minutes, Dckt. 72. The denial related to some very basic matters, which could easily be remedied by Debtor. First, the surviving Debtor has not obtained an order substituting her in as the representative for the interests of her late husband in this case.

The court denied without prejudice the surviving Debtor's motion to be appointed as the representative due to incomplete information being provided. Civil Minutes, Dckt. 66. In seeking the authorization, Debtor made only general reference to having spent $37,406.87 of death benefit monies received following the death of her co-debtor spouse. The Debtor did not provide any testimony as to the use of these monies, but merely had her attorney file a response in which he argued that Debtor received $37,406.87 and is spending the money. Debtor's Response, Dckt. 59.

If the Debtor does not have an actual ability to pay, then she can seek to modify the plan. But she must be truthful and honest, fulling disclosing all assets and income.

Economically Inconsistent Contentions

On the one hand, Debtor argues that she cannot make the payments under the current plan, having lost the income of her late husband. But on the other hand, Debtor does not appear to consider the substantially decreased expenses. Under the Plan, Debtor is paying for two cars and a motorcycle. A question arises why Debtor is paying for three vehicles for one Debtor. It may be that Debtor is paying for her adult children's vehicles, an expense which can be reduced, as well as not having to pay for the vehicle used by the late co-Debtor.

It appears that Debtor's food, personal care, clothing, and transportation expenses can be reduced significantly. It is unlikely that one person has a $750.00 ($9,000.00 a year, exclusive of vehicle insurance, registration, and installment payment) per month reasonable transportation expense. If the Debtor cuts this transportation expense in half and reduced her food and clothing expenses by $250.00 a month, there would be an additional $600.00 a month Debtor could provide to continue in her plan. Then, if the Debtor stops paying for the motorcycle and one of the two cars, there is reduction of $700.00 a month in vehicle payments though the plan.

Debtor also testifies under penalty of perjury that she has not made any transfers of money from the death benefits to family members "other than in the ordinary course of supporting my [adult, now 22 and 26 years old, Schedule J, Dckt. 1] kids and their college costs." Declaration, Dckt. 89 at 2:27–28. While providing support to adult children and helping with their education is admirable, it is less so when doing so is actually being paid for by a debtor's creditors who are not being properly paid on their claims as required by the Bankruptcy Code.

There is only one group of debts (other than the motorcycle and second car payments) provided for by the Plan – the nondischargeable tax debts totaling just over $20,000.00. Through the Plan, Debtor is able to pay these back over five years with no further interest or penalty. This is a significant economic benefit to the Debtor. Debtor's choosing to cause herself significant financial harm by dismissing this case belies her contention of mere "error" in misspending the property.

It could also appear that the renewed request to dismiss the case is one in which the Debtor is attempting to hide from the court and divert from the estate some or all of the $37,000.00 received on the death of her husband. Debtor affirmatively stated in her *pro se* request that she intends to file a Chapter 7 case so she can get a fresh start—which begets the question why she does not just seek to convert this case? A cynical person might conclude that it is because a Chapter 7 trustee in this case would know about the $37,000.00 in benefits and it might be discovered (or disclosed) in a subsequent case.

Cause does not exist to dismiss this case pursuant to 11 U.S.C. § 1307(b) by the Debtor. The Motion is denied. FN.2.

FN.2. It may be that dismissal is appropriate, but a dismissal with prejudice. Debtor appears to have, and is continuing to improperly manipulate the bankruptcy system and use the Bankruptcy Code to abuse other parties in 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 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 Motion to Dismiss is denied.

24. **14-25740-E-13** **MARIO RILEY**
PGM-3 **Peter Macaluso**

MOTION FOR COMPENSATION BY THE LAW OFFICE OF PETER G. MACALUSO, DEBTOR'S ATTORNEY
10-31-16 [92]

Final Ruling: No appearance at the December 6, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 31, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Mario Riley, the Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period August 6, 2015, through July 5, 2016. The order of the court approving substitution of Applicant was entered on September 8, 2015. Dckt. 59. Applicant requests fees in the amount of $2,850.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preventing dismissal of the case by filing a Motion to Modify Plan. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 3.95 hours in this category. Applicant assisted Client with reviewing the Trustee's Motion to Dismiss, meeting with the client, and correspondence.

Motion to Modify, PGM-1: Applicant spent 3.4 hours in this category. Applicant drafted a Motion to Modify and response to Trustee's opposition, and appeared for hearing on Motion to Modify.

Motion to Modify, PGM-2: Applicant spent 2.15 hours in this category. Applicant drafted a Motion to Modify and response to Trustee's opposition, and appeared for hearing on Motion to Modify.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter G. Macaluso	9.5	$300.00	$2,850.00
Total Fees For Period of Application			$2,850.00

FEES ALLOWED

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $2,850.00 are approved and authorized to be paid by the Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees $2,850.00

pursuant to this Application in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Macaluso, Professional Employed by the Chapter 13 Debtor
>
> Fees in the amount of $2,850.00
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

25. 16-26741-E-13 DPC-1 | **EDNA JAVIER** Mary Ellen Terranella | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-10-16 [21]**

Final Ruling: No appearance at the December 6, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 10, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled.

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

A. Debtor cannot afford to make the payments or comply with the Plan. Debtor proposes to value the secured claim of OneMain Financial for a 2000 Toyota Celica to reduce the claim from $8,000.00 to $1,000.00. The Motion to Value has been set for hearing on November 22, 2016, and must be granted, or the Debtor's Plan does not have sufficient monies to pay the claim in full.

The Trustee's objections are well-taken.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of OneMain Financial. Debtor's Motion to Value was heard by this court on November 22, 2016, and was granted. The Trustee's only objection being resolved, and the Plan complying 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 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 October 10, 2016, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 11-42544-E-13 SDB-2 | **O'DELL/VICKI WILLIAMS** **Scott de Bie** | **MOTION TO VALUE COLLATERAL OF NATIONSTAR MORTGAGE, LLC** **11-4-16 [43]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, parties requesting special notice, and Office of the United States Trustee on November 4, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim of Nationstar Mortgage, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Nationstar Mortgage, LLC is granted, and the secured claim is determined to have a value of $0.00.

The Motion to Value filed by O'Dell Williams and Vicki Williams ("Debtor") to value the secured claim of Nationstar Mortgage, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 304 Clearpointe Drive, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $185,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on November 22, 2016. Dckt. 52.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $211,777.56. Creditor's second deed of trust secures a claim with a balance of approximately $70,949.14. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore, no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Nationstar Mortgage, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 304 Clearpointe Drive, Vallejo, 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 $185,000.00 and is encumbered by a senior lien securing a claim in the amount of $211,777.56, which exceeds the value of the Property that is subject to Creditor's lien.

27. 16-26647-E-13 DPC-1 | **MARTIN DUARTE** **Mark Wolff** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **11-10-16 [16]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 10, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Debtor failed to appear at the First Meeting of Creditors held on November 3, 2016. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation. The Meeting of Creditors has been continued to December 8, 2016, at 1:30 p.m.

B. Based on the claim filed by the Internal Revenue Service, the Debtor has not filed federal tax returns for 2010, 2012, 2013, 2014, and 2015.

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear

represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Further, the Debtor has not filed all applicable federal tax returns. Specifically, Debtor has not filed a tax return for the years 2010, 2012, 2013, 2014, and 2015. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(9).

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

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

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

28. 16-26349-E-13 DPC-1 | **RICARDO VEGA** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 11-2-16 [21]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 2, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The Objection to Confirmation of Plan is sustained.

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

A. The Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written state that no such documentation exists. While the Debtor did provide draft copies of the 2014 and 2015 Federal and State tax returns, these copies appear incomplete because several lines were left blank.

B. Debtor has failed to file all pre-petition tax returns required for the four years proceeding the filing of the petition. The Internal Revenue Service filed a Proof of Claim indicating that Debtor has not filed tax returns for 2010, 2011, 2012, 2013, or 2014.

C. Debtor has failed to provide the Trustee with all business documents including two years of tax returns; seller's permit; sales tax returns; and proof of license and insurance or written statements that no such documentation exists.

D. Debtor may not be able to make the plan payments.

1. Debtor's Schedule J indicates that Debtor has three roommates contributing rent of $600.00 each, plus utilities. Debtor has failed to file Declarations indicating the roommates' abilities and willingness to contribute this amount of rental income for the life of the Plan.

2. Debtor's Schedule I lists business income of $7,300.00 per month. Debtor testified at the First Meeting of Creditors that $1,500.00 of this amount is rental income, and the remainder is business income. Debtor also indicated that he keeps handwritten ledgers of daily cash receipts. The Trustee has requested copies of these ledgers to verify the business income, but he has not received them yet.

E. Debtor's Plan may not be the Debtor's best effort. Section 2.08 of Debtor's Plan lists the mortgage payment of $1,103.70 as a Class 1 payment. Debtor's Schedule J lists a mortgage payment of $1,108.00. It appears the Mortgage expense has been counted twice. Debtor's actual net income should be $2,638.00 per month.

TRUSTEE'S STATUS REPORT

On November 29, 2016, the Chapter 13 Trustee filed a Status Report and supporting declaration updating the court on the above stated grounds. Dckt. 25. He reports that Debtor has provided copies of the following business documents: (1) sellers permit, (2) sales tax returns for the first two quarters of 2016, (3) copy of alcohol license, and (4) handwritten receipt ledgers for September and October 2016. Further, no copies of tax returns have been provided.

RULING

The Trustee's objections are well-taken.

The Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. This is cause to deny confirmation. *See* 11 U.S.C. §§ 521(e)(2)(A) & 1325(a)(1); Fed. R. Bankr. P. 4002(b)(3).

Further, the Debtor has not filed all applicable federal tax returns. Specifically, Debtor has not filed a tax return for the years 2010, 2011, 2012, 2013, and 2014. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(9).

Though Debtor has provided some documents, he has failed to timely provide the Trustee with two years of tax returns. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are

required seven days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting all documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). A portion of Debtor's income comes from the contribution of three roommates of $600.00 rent plus utilities each month. Debtor has not filed Declarations demonstrating that these roommates will be able and willing to contribute these amounts throughout the life of the Plan. With Debtor's income being uncertain, the court cannot determine whether the Plan is feasible.

The Plan may not be the Debtor's best effort. The Debtor is over the median income and proposes plan payments of $1,532.00 per month with a 0% dividend to unsecured creditors. Debtor has listed a $1,103.70 mortgage payment in Class 1 of the Plan and as an expense on Schedule J. Debtor has an additional $1,103.70 each month that should be paid into the Plan. 11 U.S.C. §1325(b).

PRIOR 2016 BANKRUPTCY FILING

Though not mentioned by the Chapter 13 Trustee, this is Debtor's second Chapter 13 case in 2016. His first case, 16-23290, was filed on May 20, 2016, and dismissed on August 23, 2016. In the First Case, confirmation of the Chapter 13 Plan was denied because: (1) Debtor failed to provide the Chapter 13 trustee with copies of business records, (2) Debtor failed to disclose a lease on Schedule G, and (3) the plan failed the liquidation test, not proving at least the $15,000.00 that creditors with unsecured claim would receive in a Chapter 7 liquidation. 16-23290; Civil Minutes, Dckt. 33. It appears that the First Case was dismissed due to Debtor paying a filing fee installment late.

The court has extended the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) in the current case. Civil Minutes, Dckt. 18.

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

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

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

29. **16-21854-E-13** **KENNETH TABOR** **MOTION TO SET ASIDE DISMISSAL**
SNM-4 **Stephen Murphy** **OF CASE**
11-18-16 [104]

DEBTOR DISMISSED: 11/17/2016

No Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 18, 2016. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Vacate 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Vacate is ~~denied/granted~~, ~~and the order dismissing the case (Dckt. 102) is vacated.~~

Kenneth Tabor ("Debtor") filed the instant Motion to Vacate Dismissal on November 18, 2016. Dckt. 104.

The instant case was filed on March 25, 2016. Dckt. 1. A plan was confirmed on July 19, 2016, and an order confirming the plan was entered on July 26, 2016. Dckts. 65 & 68.

On October 18, 2016, the Chapter 13 Trustee filed a Motion to Dismiss the Case due to Debtor being delinquent under the Plan. Dckt. 84.

On November 16, 2016, a hearing on the Motion to Dismiss was held, and the Motion was granted. Dckt. 100. The ruling was final because Debtor had filed no opposition.

On November 18, 2016, Debtor filed this instant Motion to Vacate claiming that Debtor was current under the First Modified Plan as called for by the Trustee's Motion to Dismiss.

REVIEW OF MOTION TO VACATE

The court begins with the Motion to Vacate and the supporting pleadings, each to be filed as separate documents as required by Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents in this District. The Motion states with particularity the following grounds (Fed. R. Bankr. P. 9013) upon which relief is requested:

A. Debtor commenced this Chapter 13 case on March 25, 2016.

B. On October 18, 2016, the Chapter 13 Trustee filed a motion to dismiss the case due to Debtor's defaults. The Motion stated that "debtor must be current under all payments called for by any pending Plan, Amended Plan or Modified Plan as of the date of the hearing on [the] motion or the case [would] be dismissed."

C. On November 2, 2016, Debtor filed his First Modified Plan which called for payments of $2,020.00 for three months, then $100.00 for four months, and then $2,020.00 for the remaining 53 months, providing for a 100% dividend for all allowed claims.

D. On November 16, 2016, the motion to dismiss was set for hearing. Debtor was current on the proposed First Modified Plan.

E. The bankruptcy court, as a "court of equity" has the power to reconsider, modify, or vacate previous orders so long as no intervening rights have become vested in reliance on orders. Debtor references Federal Rule of Bankruptcy Procedure 9024 and *In re Lenox*, 902 F.2d 737 (9th Cir. 1990). No points and authorities providing the court with legal analysis of these facts to properly vacating an order has been provided.

F. Because Debtor was current under the proposed First Modified Plan, the order dismissing the bankruptcy case should be vacated.

Motion, Dckt. 104. (The court notes that the "motion" has a one paragraph section with the heading "Points and Authorities." Because combining a motion and points into a "Mothorities," a Frankensteinian creation in which the required Rule 9013 grounds are hidden in the citations, quotations, arguments, conjecture, and speculation of movant's counsel, the court treats this reference not as a "points and authorities," but as a simple reference to a key rule or statutes that counsel believes is so obvious that no legal discussion is required.)

A declaration of Debtor's counsel has been provided in support of the motion. Counsel testified under penalty of perjury as follows:

A. Counsel's staff received a copy of the motion to dismiss. This staff read it to say that debtor must be current on payments of the current or a proposed plan, or the case would be dismissed.

B. On November 2, 2016, a First Modified Plan was filed, under which Debtor was current.

C. Counsel provides his legal conclusion that no intervening rights had become vested in reliance on the dismissal of the case.

Declaration, Dckt. 106.

Trustee's Response

The Trustee first states that the motion to dismiss was filed pursuant to Local Bankruptcy Rule 9014-1(f)(1), by which at least twenty-eight days' notice is given, and any opposing party is required to file an opposition at least fourteen days before the scheduled hearing.

The Trustee directs the court to a "Status Update" filed by Debtor on November 10, 2016, in response to the motion to dismiss. Dckt. 97. The Status Update reports that Debtor deposited in the Trustee's drop-box a $400.00 payment to the Trustee on November 9, 2016. It is argued that this brings the Debtor current on a proposed modified plan filed on November 2, 2016. No declaration is provided for the factual allegations made in the Status Report.

The Trustee confirms in his Response, Dckt. 110, that the $400.00 payment alleged to have been made (for which no evidence was provided) actually was made by Debtor. In light of Debtor being current on the proposed payments, the Trustee does not oppose the current Motion to Vacate.

APPLICABLE LAW

Federal Rule of Civil Procedure 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

A. mistake, inadvertence, surprise, or excusable neglect;

B. newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

C. fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

D. the judgment is void;

E. the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

F. any other reason that justifies relief.

Fed. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Id.* at 863 n.11.

The citation to *Meyer v. Lenox (In re Lenox)*, 902 F.2d 737, 740 (9th Cir. 1990), for the proposition that bankruptcy judges have a special, equitable, do whatever is right, power pursuant to 11 U.S.C. § 105 is suspect in light of the U.S. Supreme Court's ruling in *Law v. Siegel*, 571 U.S. ___, 134 S. Ct. 1188 (2014), as well established law in the Ninth Circuit in *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations)*, 502 F.3d 1086 (9th Cir. 2007), which has made it abundantly clear that the court's equitable powers under 11 U.S.C. § 105 are not a carte blanche for the court to ignore specific code sections and rules based on the esoteric idea of "equity." Rather, whether in District Court or Bankruptcy Court, the court exercises the power to vacate orders and judgments in the same manner.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463.

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 Fed. App'x 194, 196–97 (9th Cir. 2004); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 792 (B.A.P. 9th Cir. 2002).

The sole ground for the Motion to Dismiss was the Debtor's delinquency. As a Local Bankruptcy Rule 9014-1(f)(1) motion, the Debtor and Debtor's counsel were required to oppose the Motion in writing fourteen days prior to the hearing. Instead, Debtor did not file opposition and let the court make a final ruling without any argument.

Even though Debtor appears to have become current under the proposed Modified Plan before the November 16, 2016 hearing, Debtor did not appear to contest the Motion to Dismiss. Instead, Debtor and Debtor's counsel deemed it unadvised to: (1) clearly file an opposition to the motion to dismiss, (2) appear at the hearing on the motion to dismiss, and (3) when counsel read the proposed final ruling posted on the court's website dismissing the case the day before the scheduled hearing, counsel did not deem it appropriate to appear at the hearing and request the court call the matter to address the situation. (The court's posted proposed final rulings clearly stated "Appearances not Required," with the matter not being removed from the calendar.) Counsel could have made a telephonic request to the courtroom deputy to have the matter called, then make telephonic appearance, sitting at his desk working on other matters while waiting for the clerk to call the motion to dismiss, at a minimal cost, and addressed why the case should not be dismissed (and his failure to file any opposition to the motion).

The court's enforcement of the Local Bankruptcy Rules for filing of opposition and requiring parties to actually state oppositions arose in large part of various attorneys ignoring such rules in connection with motions to dismiss Chapter 13 cases. Some attorneys would react to a motion to dismiss by filing corrective documents, such as an amended plan and motion to confirm, but no opposition. Those attorneys believed it was the obligation of the Trustee and the court to determine what opposition might exist, state that opposition for such attorney, and then rule on the opposition as stated by the court or the Trustee for that attorney.

Another group of attorneys would ignore the motion to dismiss, showing up on the day of the hearing, having at least twenty-eight days' notice, and advise the court, "well, we are going to think about what we might want to consider doing about this motion to dismiss, so judge, continue the hearing for sixty to ninety days so we can work on something.....maybe."

Here, counsel offers no explanation as to why or how there are grounds under Rule 60(b) to vacate the order dismissing the case. Counsel offers no explanation as to why Debtor chose not to oppose the motion to dismiss and why such choice creates grounds under Rule 60(b) to vacate the dismissal.

The Motion merely states that Debtor filed a proposed modified plan, the Debtor was current on the plan, the Debtor provided no evidence of being current, and Debtor provided nothing other than a contention that based on "equity" the court should vacate an order that Debtor did not oppose.

The court generally gives meaningful weight to the recommendation of the Chapter 13 Trustee when he wants to dismiss a motion to dismiss or to vacate an order dismissing a case, but generally that is in conjunction with a debtor who attempted to diligently oppose the motion to dismiss. The Chapter 13 Trustee does not state that he had agreed to dismiss the motion to dismiss or continue the hearing pending Debtor prosecuting the case.

No Prejudice to Dismissal and Debtor Filing a New Case

The Motion to Vacate the Dismissal does not allege that there will be a disproportionate, or any, prejudice to Debtor just filing a new bankruptcy case and diligently prosecuting that case. The current bankruptcy case was filed on March 25, 2016. The Plan confirmed in July 2016 is in default, and Debtor is having to propose a modified plan. There are no secured claims having been valued in this case. The Debtor is merely reamortizing the payment of a debt secured by a second deed of trust and paying delinquent tax claims.

Debtor can file a new case, propose a plan, confirm a plan, and complete a plan. In the Declaration in support of confirming the modified plan, Debtor states that he was unable to work due to illness of his girlfriend and cannot make up the $8,000.00 plan payment arrearage. Dckt. 91. Given the $8,000 hole that was created for Debtor, it appears that Debtor actually is better off with a new case, a new plan, and the flexibility of starting over.

Failure to Defend Motion to Dismiss

Debtor offers no explanation for why he and his attorney did not defend the Trustee's motion to dismiss. Debtor and his counsel cannot ignore motions, taking whatever other action they think should resolve that motion, and then leave it for the court and Trustee to defend the Debtor.

Debtor and counsel may protest that they think such application of the rules is too harsh, not fair, and the court should just look the other way. Unfortunately, once the court does that for one attorney, then every attorney will demand such largess and they (both creditor and debtor) all will just believe that the Rules requiring opposition to motions are "optional" and a final hearing is merely a calendaring date for the attorney and party to start thinking about when they need to actually consider taking appropriate action.

Deafening in its absence is any allegation or testimony as to why counsel for Debtor did not appear, either in person or telephonically at the hearing and request that the court consider any opposition. No testimony is provided by counsel of what he did when he read the ruling the day before the hearing saying the motion to dismiss was granted and the case dismissed.

Looking at the file, the court notes that the motion to vacate the November 17, 2016 order dismissing the case was filed on November 18, 2016. Thus, it appears that Debtor and counsel realized that events occurred differently than they hoped, and they moved to take some action. But they do not explain why they did not act two days earlier, the day of the hearing. Instead, they have now belatedly (even if two days) acted in a way to make otherwise unnecessary work for the court.

In other cases when counsel fails to oppose a motion and then seeks to have it vacated, citing to significant prejudice to the debtor, the court has required counsel to reimburse the Trustee for the wasted time in having to deal with a motion to vacate. The monies are paid into the U.S. Trustee fund and not into the Trustee's pocket. Here, the court computes the Chapter 13 Trustee having spent two hours, at a discount hourly rate of $250.00, for a total of $500.00 in otherwise unnecessary legal fees.

DISCUSSION AT HEARING

At the hearing, xxxxxxxxxxxxxxxxxxxx.

Therefore, in light of the foregoing, the Motion is ~~denied/granted~~, ~~and the order dismissing the case (Dckt. 102) is vacated~~.

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 Vacate Dismissal of Case filed by 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 ~~denied/granted~~, ~~and the order dismissing the case (Dckt. 102) is vacated~~.

30. 16-22360-E-13 DERRICK NOBLES
DPC-3 Chinonye Ugorji

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-28-16 [47]

Final Ruling: No appearance at the December 6, 2016 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 and Debtor's Attorney on October 28, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Objection to Debtor's Claim of Exemptions is sustained, and the exemptions for cash ($1,125.00) and two bank accounts ($525.00) under California Code of Civil Procedure § 704.070 and for an interest in a pending personal injury claim valued at $20,000.00 are disallowed in their entirety.

David Cusick, the Chapter 13 Trustee opposes Derrick Nobles's ("Debtor") claim of exemptions stated as follows:

A. Debtor now exempts cash on hand ($1,125.00) and two bank accounts, Wells Fargo Check ($375.00) and Wells Fargo Savings ($150.00) under California Code of Civil Procedure § 704.070.

B. On Schedule B, Debtor reports interest in a pending personal injury claim with a $20,000.00 estimated value.

Section 522(l) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4003(b) permit a party in interest to object to a debtor's claim of exemption. The Trustee has objected to Debtor's claim of an exemption under California Code of Civil Procedure § 704.070 because Debtor has not designated what subsection applies to the claimed exemption. The Trustee objects to the allowance of the claimed

exemption because it appears that the exemption is generally allowed as an exemption on paid wages. Debtor's Schedule I shows the Debtor's only source of income is rental income from renting rooms in his personal residential real property. Debtor is not entitled to the claimed exemption for cash and bank balances listed on Schedule B.

Regarding the personal injury claim, Debtor makes no reference to a lawsuit filed on the Statement of Financial Affairs #9. Debtor has provided insufficient information detailing the claim or potential for any claim. Debtor reports in his declaration that he has acquired two renters in his residence that will enable Debtor to make plan payments. Debtor also indicates that he is awaiting an application for disability. It appears based on Debtor's declaration that he anticipates his financial situation to improve in the future, although nothing is reported on Schedule I or J. The Trustee is not certain that the Debtor is entitled to the exemption on the personal injury claim because Debtor failed to properly disclose the asset and because the settlement may not be reasonably necessary for his support.

The Trustee's Objection is well-taken. Debtor did not list a subsection for the claimed cash and bank accounts, but those funds would not be eligible anyway because California Code of Civil Procedure § 704.070 exempts paid wages, not rental income. Additionally, Debtor has not provided sufficient information for the court to determine if he has a valid exemption for a personal injury lawsuit that not been described. Debtor has not opposed the Trustee's Objection, which could be interpreted as conceding the Trustee's points. The Trustee's Objection is sustained, and the claimed exemptions are disallowed in their entirety.

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 Debtor's Claim of Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemptions for cash ($1,125.00) and two bank accounts ($525.00) under California Code of Civil Procedure § 704.070 and for an interest in a pending personal injury claim valued at $20,000.00 are disallowed in their entirety.

31. 16-25760-E-13 DPC-2 | **JULIET DACPANO** **Pro Se** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** **10-20-16 [28]**

Final Ruling: No appearance at the December 6, 2016 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 (*pro se*) on October 20, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Objection to Debtor's Claim of Exemptions is sustained, and the exemption for $210.00 of "Personal Property" claimed under the "Homestead Exemption" is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee opposes Juliet Dacpano's ("Debtor") claim of exemptions stated as follows:

A. $210.00 of "Personal Property" claimed under the "Homestead Exemption" on Schedule C. Dckt. 18.

Section 522(l) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4003(b) permit a party in interest to object to a debtor's claim of exemption.

The Trustee objects to use of the homestead exemption to exempt personal property, instead of real property. Additionally, the Trustee notes that Debtor has not claimed a specific section of the California Code of Civil Procedure.

The Trustee also notes that Debtor does not appear to have listed all of her assets on Schedule B. She listed no vehicles, but admitted at the First Meeting of Creditors held on October 13, 2016, that she

owns a 2001 Cadillac SUV. Debtor has scheduled only $100.00 of cash and $110.00 in a Wells Fargo Bank account. Debtor has no household goods, furnishings, electronics, collectibles, shorts or hobbies equipment, firearms, clothes, jewelry, pets, or other personal or household items of value.

The Trustee's Objection is well-taken. Debtor attempts to use the homestead exemption to cover personal property, not real property, and Debtor has not listed a section of the California Code of Civil Procedure. Both are improper, and the exemption cannot stand. The Objection is sustained, and the exemption is disallowed in its entirety.

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 Debtor's Claim of Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection is sustained, and the claimed exemption for $210.00 of "Personal Property" claimed under the "Homestead Exemption" is disallowed in its entirety.

32. **16-26860-E-13 LBG-1** | **MICHAEL/BERNADETTE AMBERS** | **CONTINUED MOTION TO EXTEND AUTOMATIC STAY**
Lucas Garcia | **10-24-16 [14]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2016. By the court's calculation, 8 days' notice was provided. The court required 8 days' notice. Dckt. 20.

The Motion to Impose the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3)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 offer 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. At the hearing ----------.

The Motion to Impose the Automatic Stay is denied.

Michael Ambers and Bernadette Ambers ("Debtor") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) imposed in this case. FN.1. This is the Debtor's third bankruptcy petition pending in the past year with the two prior cases having been dismissed. The Debtor's prior bankruptcy cases (Nos. 16-20687 and 15-25328) were dismissed on October 7, 2016, and January 28, 2016, respectively. *See* Order, Bankr. E.D. Cal. No. 16-20687, Dckt. 35, October 7, 2016; Order, Bankr. E.D. Cal. No. 15-25328, Dckt. 55, January 28, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A)(i), the provisions of the automatic stay did not go into effect upon Debtor filing the instant case.

FN.1. The court notes that Debtor claims to be filing a Motion to Extend the Automatic Stay, but the Debtor is incorrect. As explained in this ruling, the motion is actually one to impose the automatic stay.

NOVEMBER 1, 2016 HEARING

At the hearing, the court imposed the automatic stay on an interim basis through 12:00 p.m. on December 9, 2016. Dckt. 25. The court continued the hearing to 3:00 p.m. on December 6, 2016, and ordered that any supplemental pleadings be filed by November 23, 2016.

DISCUSSION

No additional pleadings have been filed since the November 1, 2016 hearing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if two or more of Debtor's cases were both pending within the year preceding filing of the instant case. *Id.* § 362(c)(4)(D)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(4)(D).

Here, Debtor's prior cases were dismissed after Debtor failed to make plan payments (No. 16-20687) and after Debtor failed to obtain confirmation of an amended plan (No. 15-25328).

Debtor argues that the instant case was filed in good faith and explains that the previous case (No. 16-20687) was dismissed because the Debtor's mother died from a serious illness, and the expenses for her end of life care were beyond the Debtor's ability to recuperate. Debtor fails to offer an explanation for why Case No. 15-25328 was dismissed, however.

In the prior two bankruptcy cases Debtor was represented by counsel, the same counsel as in this bankruptcy case. It appears that Debtor had every opportunity to perform Chapter 13 plans in the prior to cases but was incapable of so doing. In the prior bankruptcy case, the Chapter 13 Trustee sought dismissal because Debtor was $19,600.00 in default in plan payments. 16-20687; Motion, Dckt. 30. The Monthly plan payments were $4,900.00, which puts Debtor four months in default when the motion was filed. *Id.*; Plan, Dckt. 5. The motion to dismiss was filed only six months into that case.

In the second case dismissed within one year of the commencement of this case, the Trustee objected to confirmation because Debtor was $9,300.00 in default (two months payments) four months into plan payments, as well as the Debtor having a $2,300 default in payments to a secured creditor. 15-25328; Civil Minutes, Dckt. 51.

Accepting that the loss of a parent causes both financial and emotional toll, assuming Debtor actually has $4,900 per month to fund a plan, in the fourteen months since the first bankruptcy case dismissed in the last year was filed and now, there should be around eleven months of the $4,900 lying around—that totals $53,900.00. No such large sum of money is accounted for in the Schedules.

Though given additional time to document what has happened to this $53,900.00, no additional testimony has been provided by Debtor. All Debtor stands on is the original testimony that the "final days" of Debtor's mother health care, travel, funeral, and burial expenses caused Debtor to incur "additional

expenses." That is not sufficient to explain what has happened to $53,900.00 or why Debtor has repeatedly failed to perform plans and prosecute cases.

The court finds that Debtor has not sufficiently rebutted, by clear and convincing evidence (11 U.S.C. § 362(c)(4)(B)) the presumption of bad faith under the facts of this case and the prior cases for the court to impose the automatic stay. The Motion is denied, and the automatic stay is not in effect in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Impose the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied, and the automatic stay is not in effect in this case.

33. 16-26063-E-13 MICHAEL DOW MOTION TO CONFIRM PLAN
SJD-1 Susan Dodds 10-20-16 [14]

Final Ruling: No appearance at the December 6, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 20, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed a statement of non-opposition on October 24, 2016. The Amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on October 20, 2016, is confirmed. Counsel for the Debtor shall prepare an

appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34. 16-26163-E-13 LBG-1 | **RICHARD/TINA HOLLOWAY** Lucas Garcia | **MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA** **10-27-16 [19]**

Tentative Ruling: 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.

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, Creditor, and Office of the United States Trustee on October 27, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim of Chrysler Capital has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of Chrysler Capital is granted, and the secured claim is determined to have a value of $10,000.00.

The Motion filed by Richard Holloway and Tina Holloway ("Debtor") to value the secured claim of Santander Consumer USA is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Dodge Dart with 50,000 miles ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on November 21, 2016. Dckt. 23. The Trustee asserts three points. First, Debtor's Declaration in Support of the Motion does not comply with Local Bankruptcy Rule 9004-1(c) in that "the name of the person signing the document shall be typed

underneath the signature." Debtor is reminded that the court expects full compliance with the Local Rules, and failure to do so is, by itself, grounds to deny a motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, the Trustee notes that Debtor has not provided any information about the vehicle, such as its style, condition, included options, or why its value is $10,000.00. Chrysler Capital filed Proof of Claim No. 4 on October 7, 2016, for $20,156.29 regarding a 2013 Dodge Dart SXT. That claim includes a secured portion of $11,675.00 and an unsecured portion of $8,481.29. The claim also indicates that the Vehicle is worth $11,675.00.

Third, the Trustee notes that the claim was filed by Chrysler Capital, but this Motion seeks to value a claim of Santander Consumer USA. Chrysler Capital's filed claim includes a Certificate of Title that lists Chrysler Capital on it. The claim also includes a Santander Consumer USA Inc. Secretary's Certificate dated February 1, 2013, and signed by Eldridge A. Burns, Jr., Chief Legal Officer and Secretary of Santander Consumer USA. That certificate states that Chrysler Group LLC "granted to the corporation a non-transferable, royalty-free license to use the 'Chrysler Capital,' 'Chrysler,' 'Dodge,' 'Jeep,' 'RAM,' . . . and 'Mopar' word trademarks, and their corresponding brand logos."

Based on public information presented by Santander Consumer USA on its website https://www.santanderconsumerusa.com/about/overview, Santander created Chrysler Credit Capital in 2013. Therefore, the Trustee believes that the proper party for this Motion is Chrysler Capital.

DISCUSSION

The Trustee's supplemental information is well-taken. The Trustee has provided information that a claim was filed for the relevant Vehicle and that another party is tied to this Motion. The court presumes that this Motion intends to value the secured claim of Chrysler Capital ("Creditor"), not Santander Consumer USA. Despite Debtor and Creditor valuing the Vehicle at different amounts, neither has provided an actual valuation report for it. Debtor's opinion is evidence of the Vehicle's value, and the court proceeds with the $10,000.00 valuation. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While Debtor's failure to provide any testimony about the condition of the vehicle if Creditor had filed an opposition or provided evidence of value (such as Kelly Blue Book or NADA valuations), no such objection has been filed. Additionally, it appears that Creditor's value and Debtor's value are close, based on the secured claim filed in this case.

The lien on the Vehicle's title secures a purchase-money loan incurred on April 1, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,415.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $10,000.00. *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 to Value Secured Claim of Chrysler Capital filed by Richard Holloway and Tina Holloway ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Chrysler Capital ("Creditor") secured by an asset described as a 2013 Dodge Dart with 50,000 miles ("Vehicle") is determined to be a secured claim in the amount of $10,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $10,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

35. 15-24065-E-13 DPC-5 | **MAURICE CARR** **Pro Se** | **OBJECTION TO CLAIM OF SACRAMENTO COUNTY TAX BK DEPT, CLAIM NUMBER 2-1** **10-19-16 [107]**

Final Ruling: No appearance at the December 6, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Debtor (*pro se*), Creditor, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) thirty-day notice and L.B.R. 3007-1(b)(1) fourteen-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 2-1 of Sacramento County Tax BK Dept is sustained, and the claim is allowed as a secured claim in the amount of $1,205.00.

David Cusick, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Sacramento County Tax BK Dept ("Creditor"), Proof of Claim No. 2-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $1,205.00 and priority in the amount of $1,205.00. Objector asserts that the claim should be allowed as a secured claim in the amount of $1,205.00. Priority status is not relevant for purposes of distribution when the Plan provides for the claim as secured and was confirmed as secured unless monies beyond $1,205.00 are owed.

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 a 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).

Based on the evidence before the court, the creditor's claim is allowed as a secured claim in the amount of $1,205.00 and not given priority status. The Objection to the Proof of Claim is sustained.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Sacramento County Tax BK Dept , Creditor filed in this case by David Cusick, 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 to Proof of Claim Number 2-1 of Sacramento County Tax BK Dept is sustained, and the claim is allowed as a secured claim in the amount of $1,205.00.

36. **16-26568-E-13** **ALICIA LOFTIN** **OBJECTION TO CONFIRMATION OF**
DL-1 **Ashley Amerio** **PLAN BY SACRAMENTO MUNICIPAL UTILITY DISTRICT**
11-9-16 [14]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the U.S. Trustee on November 9, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 offer 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. At the hearing, ----------.

The Objection to Confirmation of Plan is overruled, and the Plan is confirmed.

Sacramento Municipal Utility District, a Creditor, opposes confirmation of the Plan on the basis that:

A. The Plan does not comply with 11 U.S.C. § 1325(a). The Plan decreases the amount of the interest rate such that the value of Plan payments would be less than the allowed amount of the claim.

The Plan provides for an interest rate of 4.0%. The prime rate at the time of filing and currently is 3.5%. Accordingly, when one computes the prime rate of 3.5% plus a risk adjustment of between 1.0% and 3.0%, the lowest rate of interest for the Plan should be 4.5%.

DEBTOR'S REPLY

Alicia Loftin ("Debtor") filed a Reply on November 22, 2016. Dckt. 20. In response to Creditor's Objection, Debtor proposes to increase the interest rate to 4.5% through additional language in the Order Confirming Plan.

Debtor explains that she listed a higher principal amount owed to Creditor than what Creditor listed in its claim. Therefore, the amount of money proposed in the current plan will cover Creditor's claim at the higher interest rate without affecting disbursements to other creditors.

DISCUSSION

Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Creditor has not identified any risk factors present in this case, but Debtor has acquiesced to the request for a higher interest rate by proposing additional language for the Order Confirming Plan. Creditor's Objection has been resolved, and it is overruled.

The Plan, with additional language, 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 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 Objection is overruled, and Debtor's Chapter 13 Plan filed on September 30, 2016, as amended at the hearing to increase the interest rate on the SMUD secured claim to 4.5%, is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, stating the above amendment, 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.

37. 16-26070-E-13 STEPHANIE RUSCIGNO
Peter Macaluso

STATUS CONFERENCE RE: STIPULATION FOR ADEQUATE PROTECTION
10-19-16 [33]

THE ORDER FOR THE PERSONAL OF APPEARANCES OF ATTORNEYS IS VACATED,
AND
TELEPHONIC APPEARANCES FOR MICHAEL WINTRINGER AND PETER MACALUSO ARE PERMITTED

Debtor's Atty: Peter G. Macaluso

Notes:
Set by order of the court filed 11/1/16 [Dckt 38]. No telephonic appearances permitted. Status Conference Reports due on or before 11/22/16.

Status Conference Report on Stipulation for Adequate Protection [Creditor-DFI Funding, Inc.] filed 11/22/16 [Dckt 51]

Stephanie Ruscigno, the Chapter 13 Debtor, ("Debtor") commenced this bankruptcy case on September 12, 2016. This was Debtor's second bankruptcy case in 2016, the first having been dismissed on September 12, 2016. 16-25568; Order, Dckt. 11. The court has entered an order extending the automatic stay, to the extent it would have been terminated as to the Debtor, pursuant to 11 U.S.C. § 362(c)(3)(B). Orders, Dckts. 25 & 37.

On October 19, 2016, DFI Funding, Inc. ("Creditor") and Debtor filed a pleading titled "Stipulation for Adequate Protection and Treatment of Secured Claim in Chapter 13 Plan." Dckt. 33. Creditor and Debtor have lodged with the court a proposed order that states and orders, "The Stipulation for Adequate Protection and Treatment of Secured Claim in Chapter 13 Plan filed with the Court on October 19, 2016 is approved and shall be made an Order of this Court." The proposed "order" does not grant any specific relief, but merely says that the "Stipulation," for which there was no notice and hearing, is "approved," and the "stipulation" is "made an order of the court."

The "Stipulation" is a six-page document and purports to accomplish all of the following:

A. Allows Creditor a secured claim in the amount of $407,249.09.

B. Mandates the terms of the Chapter 13 Plan as to Creditor's Claim.

C. In the event of a default in any payments to Creditor, Debtor will be assessed a $75.00 late fee.

D. In the event of a default and a failure to cure within ten days, Creditor is entitled to *ex parte* relief from the automatic stay.

E. If Creditor seeks relief from the stay, the notice requirements of Federal Rule of Bankruptcy Procedure 3002.1 are waived.

F. If Creditor seeks relief from the automatic stay, the fourteen-day stay of enforcement pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived.

G. Debtor represents and warrants that Debtor has no claims against Creditor.

H. Debtor waives, releases, and discharges any claims it, or any successors or assigns, could have against Creditor.

I. Debtor grants Creditor a general release, of all claims, known and unknown.

J. Debtor is required to file an amended Plan on the terms dictated in the Stipulation.

Stipulation, Dckt. 33.

No Motion to Approve a Stipulation was filed with the court. Fed. R. Bankr. P. 9014 requiring a motion or application (when permitted) when relief through an order is sought from the court. No motion to approve any compromises where filed and noticed on creditors and other parties in interest. Fed. R. Bankr. P. 9019. No basis is given for the court, based on an *ex parte* Stipulation with no notice on creditors and other parties in interest, to enter an order allowing a secured claim for creditor.

This Stipulation, advanced by creditor and agreed to by Debtor, causes the court significant concern, both as to counsel for Creditor and counsel for Debtor. It appears that both attorneys have filed a pleading and are seeking an order from the court for which no relief is appropriate. It appears that both counsel and their clients have violated the certifications made by all of them pursuant to Federal Rule of Bankruptcy Procedure 9011.

The court set a Status Conference and ordered both attorneys to appear at the Status Conference in person, no telephonic appearances permitted to address the court's concerns. The court afforded the attorneys the opportunity to address these issues before the court makes a determination of whether to issue an order to show cause why civil sanctions should not be issued by this court, and this matter be referred to the United States District Court for consideration of suspension of the attorneys' admission to practice in this District and the issuance of punitive sanctions by the District Court.

DFI FUNDING, INC. STATUS REPORT

DFI Funding, Inc. ("DFI") filed a Status Report on November 22, 2016, for this hearing. Dckt. 51. DFI and its counsel demonstrate an appreciation for the seriousness of the concerns of the court and provides the following for the court to consider.

DFI notes that this is the Debtor's third bankruptcy case filed in 2016. DFI asserts a first deed of trust against Debtor's residence to secure its claim. Because the debt to DFI matured in 2011, DFI has agreed to forebear on foreclosing to allow Debtor the opportunity to sell the property. DFI asserts that it has agreed to accept substantially reduced payments during this time.

Notwithstanding there being no automatic stay in this case due to the prior cases that were pending and dismissed in the prior year, DFI agreed not to proceed with a foreclosure (and set to be conducted the day after DFI was served with Debtor's motion to impose the stay in this case). The Stipulation filed with the court was the culmination of the negotiations between counsel for DFI and counsel for Debtor.

The court continued the hearing on the Debtor's Motion to Impose the Stay to afford DFI and Debtor the opportunity to continue in their negotiations. Once a stipulation was reached, it was filed with the court and the proposed order lodged with the court.

Bankruptcy Rule 9014

DFI directs the court to the Debtor's Motion to Impose the Automatic Stay to which the Stipulation relates. The Stipulation and proposed order were served on all parties prior to the October 25, 2016 hearing. The Certificate of Service states that the Stipulation and proposed order were deposited in the U.S. Mail on October 19, 2016. Dckt. 34. They were served on:

Debtor
Stephanie Leanne Ruscigno
1660 Sharon Dr.
Yuba City, CA 95993

Debtors Attorney
Peter G. Macaluso
7320 South Land Park Dr. #127
Sacramento, CA 95831

Chapter 13 Trustee
David Cusick
PO Box 1858
Sacramento, CA 95812

U.S. Trustee
Office of the U.S. Trustee
Robert T. Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

Chamber's Copy
Hon. Ronald H. Sargis
Robert T. Matsui United States Courthouse
501 I Street, Suite 3-200
Sacramento, CA 95814

Request for Special Notice
Synchrony Bank
c/o Recovery Management Systems Corporation
25 SE 2nd Avenue, Suite 1120
Miami, FL 33131

Id. As the court will discuss below, Synchrony Bank is not the only other creditor or party in interest in this case. See Verification and Master Mailing List, Dckt. 3, and Schedules D, E, and F listing twenty-one creditors, Dckt. 1.

Bankruptcy Rule 9019

DFI raises the question as to whether Rule 9019 would apply in a Chapter 13 case in which there is no litigation pending or debtor has not objected to a creditor's claim. Therefore, it cannot apply to this Stipulation (which by its very name indicates that parties are forgoing certain possible rights or objections, and fixing rights or interests to try and prevent anyone else from challenging them). In the Status Report, DFI admits that the Stipulation has Debtor giving DFI a release of what DFI asserts are "unmeritorious claims."

The gist of the position taken by DFI is that since the Stipulation is "fair," it gives the Debtor the opportunity to sell the property, and the Debtor is agreeing to only what DFI has determined its claim to be and give up "unmeritorious claims," then there is no reason to comply with Federal Rule of Bankruptcy Procedure 9019 or seek to have the court, after a noticed hearing, approve a settlement that compromises and fixes rights of a party with a debtor.

Bankruptcy Rule 9011

DFI asserts that Federal Rule of Bankruptcy Procedure 9011 only applies to a party to the extent that the party is not represented by counsel. Because counsel represents DFI, then it is immunized from any responsibility for what has been done in connection with the Stipulation and order. For DFI's counsel, it is asserted:

A. The Stipulation was not intended to harass anyone or delay proceedings.

B. The Stipulation does not contain any "allegations" or "factual contentions."

C. The Stipulation does not contain any "denials of factual contentions."

REVIEW OF STIPULATION AND DFI RESPONSE

It appears that DFI and its counsel miss the significance of what they are attempting and have attempted to do. The court, in the order setting the hearing, attempted to lay it out for DFI (see text above that was taken directly from the Status Conference Order), its attorney, Debtor, and Debtor's attorney. (Debtor's attorney has not filed a Status Conference statement). The court reviews in greater detail the Stipulation as follows:

A. DFI is stipulated to have a claim in the amount of $407.249.09.

1. Having the court order such amount appears to be an attempt to fix such amount and "allow the claim" in that amount.

2. Such order appears to be one in which not only the Debtor compromises the right to objection to the claim, but also to bar any other party in interest from ever objecting to the claim in this case. Thus, the "stipulation" would compromise the rights of every other party in interest.

B. Debtor shall amend the Chapter 13 Plan, and the court will order the Debtor to include the following, and only the following, terms for the treatment of DFI's claim:

1. Ordered Plan Terms:

a. Debtor will make ten monthly payments of $1,600.00 each;

b. Debtor will make a single balloon payment of $175,000.00 on or before September 12, 2017.

c. Debtor waives the balloon payment notice requirements of California Civil Code § 2924i.

2. In having the court so order, DFI and Debtor have the court purport to "confirm" plan terms for the Debtor, and insulate such plan terms from any objection by any other party in interest, the Chapter 13 Trustee, or the U.S. Trustee. 11 U.S.C. § 1325 does not provide for such piecemeal confirmation of a plan.

C. DFI is granted relief from the automatic stay pursuant to specified terms of the Stipulation.

1. Debtor compromises the right to oppose a motion for relief from the automatic stay, and DFI has the court "pre-order" termination of the stay.

D. Debtor warrants and gives up all claims, actions, defenses, or offsets against Debtor.

1. What is given up is not stated or identified for any intelligent consideration by the court and parties in interest (if they had been notified of Debtor's intent to compromise Debtor's and the estate's rights).

E. Debtor grants DFI a general release against any and all claims, of whatever kind, whatever may exist, both of the Debtor and the bankruptcy estate.

1. Here, Debtor clearly compromises, and forfeits all of Debtor's rights and bankruptcy estate's rights against DFI. Though DFI says this is "no big deal" because DFI has determined that the undisclosed possible claims and rights are "unmeritorious," DFI has extracted a general release from Debtor.

F. That there is a substantial compromise of the Debtor's and bankruptcy estate's rights and interests is admitted by DFI and the Debtor in the Stipulation, which states:

1. "It is acknowledged and understood by Debtor that there is a risk that as of now and subsequent to execution of this Stipulation, she may incur or suffer

> loss, damage or injury that is or may be related to the matters set forth herein, but that such loss or damages may be unknown or unexpected at the time of the execution of this Stipulation. There is also a risk that loss, damage or injury now known may become worse or greater than now known or expected. The purpose of this Stipulation is to, among other things, release the Lender Releasees from all such known or unknown, expected or unexpected claims. Debtor acknowledges that this Stipulation and all releases and waivers contained herein are intended to and do apply to all such known or unknown, expected or unexpected risk, loss, damage and/or injury." Stipulation ¶ 14, p: 5:1–9; Dckt. 33.

The court is at a loss to understand how DFI does not believe that the Stipulation, which fixes its secured claim, terminates the rights of any party in interest to object to the claim, fixes plan terms, precludes the Debtor, Chapter 13 Trustee, U.S. Trustee, and any party in interest from objecting to the mandated plan terms, provides for terminating the automatic stay, and terminates and releases all rights and claims of the Debtor, and the bankruptcy estate is not a compromise of rights and interests.

Federal Rule of Bankruptcy Procedure 9019 provides:

> "Rule 9019. Compromise and Arbitration
>
> (a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.
>
> (b) Authority to compromise or settle controversies within classes. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.
>
> (c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration."

The court must further consider Federal Rule of Bankruptcy Procedure 2002, which provides for notice to be given for the Motion to approve the settlement or compromise.

> "Rule 2002. Notices to Creditors, Equity Security Holders, Administrators in Foreign Proceedings, Persons Against Whom Provisional Relief is Sought in Ancillary and Other Cross-Border Cases, United States, and United States Trustee
>
> (3) the hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent; . . . ."

Fed. R. Bankr. P. 2002(a)(3). Though Federal Rule of Bankruptcy Procedure 2002(i) allows the bankruptcy judge to order that notice of a compromise may be sent only to the U.S. Trustee, no such limited notice has been ordered in this case.

On its face, a compromise or settlement (such as fixing a creditor's claim and releasing all rights and interests of the Debtor and bankruptcy estate) may be approved pursuant to a motion, after notice and hearing, and notice given to creditors as provided in Federal Rule of Bankruptcy Procedure 2002. DFI's contention that no motion, notice, and hearing is required for the Stipulation and order approving Stipulation and granting DFI all of the relief provided in the Stipulation does not square with the plain language of Rule 9019.

Consideration of Fed. R. Bankr. P. 9011

DFI and its counsel take a very narrow reading of the Stipulation and proposed order lodged with the court. It is asserted that there is nothing wrong with filing a Stipulation with the court that fixes a secured claims, cuts off any right to object to the claim for Debtor, the Chapter 13 Trustee, and all parties in interest, and waives the rights and interests of the Debtor and bankruptcy estate without notice to all parties in interest and any hearing. In pertinent part, Federal Rule of Bankruptcy Procedure 9011 provides:

> "Rule 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers
>
> (a) Signature. **Every** petition, **pleading**, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, **shall be signed by at least one attorney of record in the attorney's individual name.** A party who is not represented by an attorney shall sign all papers. Each paper shall state the signer's address and telephone number, if any. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.
>
> (b) Representations to the court. **By presenting to the court** (whether by signing, filing, submitting, or later advocating) **a** petition, pleading, written **motion**, **or other paper**, **an attorney** or unrepresented party **is certifying** that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[,]--
>
> (1) **it is not being presented for any improper purpose**, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) **the claims**, defenses, **and other legal contentions** therein **are warranted by existing** law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief."

While DFI argues that representation by an attorney immunizes it from any personal liability for sanctions under Federal Rule of Bankruptcy Procedure 9011, such is not accurate. As discussed in *Collins v. Walden*, the client's responsibility for sanctions depends on their conduct and knowledge when advancing rights and interests with the attorney in federal court. 834 F.2d 961 (11th Cir. 1987) (discussing the analogous provision under Federal Rule of Civil Procedure 11 in District Court). However, the court's concerns with the present Stipulation, compromise of the rights of Debtor and the bankruptcy estate, and the pre-ordered plan terms focus on DFI's counsel.

The court cannot see any legal contention based on existing law or nonfrivolous argument for the extension of law that DFI and its counsel can seek to have this court, pursuant to a stipulation, for which no motion has been filed, to order that a compromise and release of rights, interests, and claims of the Debtor, bankruptcy estate, and all other parties in interest, as well as confirm (and mandate) the terms of any Chapter 13 Plan in this case.

The Stipulation and Order were submitted for an improper purpose—obtaining an order purporting to terminate rights and interests without a motion seeking approval of such compromise and notice to creditors and other parties in interest. Merely because a debtor has not filed an objection or law suit does not mean that such potential rights are without merit merely because the creditor determines that they "have no merit."

DISCUSSION AT HEARING

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

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 Status Conference for the Stipulation to determine secured claim, waive and release rights and interests of the bankruptcy estate, Debtor, and all other parties in interest, and predetermine and confirm terms for treatment of Creditors' secured claim having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the **xxxxxxxxxxxxxxxxxxxx**.

38. **14-23271-E-13 HLG-12** | **ROBERT/CINDY LANDINGHAM** **Kristy Hernandez** | **MOTION TO AVOID LIEN OF CACH, LLC** **11-14-16 [150]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 14, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Robert Landingham and Cindy Landingham ("Debtor") commonly known as 8242 Streng Avenue, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $2,312.10. An abstract of judgment was recorded with Sacramento County on September 3, 2010, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $280,000.00 as of the date of the petition. The unavoidable consensual liens that total $367,653.92 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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 the 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).

ISSUANCE OF A CHAMBERS PREPARED 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 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 CACH, LLC, California Superior Court for Sacramento County Case No. 34200900061878, recorded on September 3, 2010, Book 20100903 and Page 1231, with the Sacramento County Recorder, against the real property commonly known as 8242 Streng Avenue, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

39. **14-23271-E-13** **ROBERT/CINDY LANDINGHAM** **MOTION TO AVOID LIEN OF**
HLG-13 **Kristy Hernandez** **DISCOVER BANK**
11-14-16 [155]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 14, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Robert Landingham and Cindy Landingham ("Debtor") commonly known as 8242 Streng Avenue, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $7,377.53. An abstract of judgment was recorded with Sacramento County on May 1, 2012, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $280,000.00 as of the date of the petition. The unavoidable consensual liens that total $367,653.92 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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 the 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).

ISSUANCE OF A CHAMBERS PREPARED 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 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, California Superior Court for Sacramento County Case No. 34-2011-00114478, recorded on May 1, 2012, Book 20120501 and Page 2489, with the Sacramento County Recorder, against the real property commonly known as 8242 Streng Avenue, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

40. **14-23271-E-13 HLG-14** | **ROBERT/CINDY LANDINGHAM** **Kristy Hernandez** | **MOTION TO AVOID LIEN OF SECURITY CREDIT SERVICES, LLC** **11-14-16 [160]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 14, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Security Credit Services, LLC ("Creditor") against property of Robert Landingham and Cindy Landingham ("Debtor") commonly known as 8242 Streng Avenue, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $12,865.48. An abstract of judgment was recorded with Sacramento County on June 8, 2012, that encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $280,000.00 as of the date of the petition. The unavoidable consensual liens that total $367,653.92 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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 the 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).

ISSUANCE OF A CHAMBERS PREPARED 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 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 Security Credit Services, LLC, California Superior Court for Sacramento County Case No. 34-2010-00085314, recorded on June 8, 2012, Book 20120608 and Page 0733, with the Sacramento County Recorder, against the real property commonly known as 8242 Streng Avenue, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

41. **14-20773-E-13** **WILLIAM KENITZER** **MOTION TO SELL**
SLH-2 **Seth Hanson** **10-25-16 [27]**

No Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served Chapter 13 Trustee, creditors, and Office of the United States Trustee on October 25, 2016. By the court's calculation, 42 days' notice was provided. 21 days' notice is required. Fed. R. Bankr. P. 2002(a)(2) (requiring twenty-one day' notice).

The Motion to Sell 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Sell is xxxxxxxxxxxxxxxxxx.

The Bankruptcy Code permits the Chapter 13 Debtor, William Kenitzer ("Movant"), to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 119 Campo Street, Roseville, California ("Property").

The proposed purchaser of the Property is Cynthia Winkle, and the terms of the sale are:

A. The purchase price is to be $281,000.00 and will be divided as follows:

1. $259,288.33 to Ditech (successor in interest to Bank of America, N.A.) on the first deed of trust in full satisfaction of its secured loan, and such funds will be paid simultaneously with the transfer of title or possession to the buyer;

2. All costs of sale, such as escrow fees, title insurance, and broker's commissions will be paid in full from the sale proceeds by the title company handling the transaction;

B. There will be no note carried back, and the entire purchase price will be paid at the closing;

C. Movant will not relinquish title to or possession of the subject property prior to payment in full of the purchase price;

D. Movant shall not provide the Buyer the $5,000.00 credit toward lender-approved recurring and non-recurring closing costs, as previously agreed on September 25, 2016;

E. The loan contingency removal date is December 7, 2016;

F. Escrow shall close on December 13, 2016.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on November 3, 2016. Dckt. 32. The Trustee indicates that Debtor seeks to sell the property for $281,000.00, which is $17,000.00 less than the initial purchase price stated in Debtor's previous motion. Debtor and purchaser agreed on the decrease of the original sales price of $298,000.00 to match the appraisal of the property.

Also, the Motion states that $259,288.33 of the sales proceeds is allocated to Ditech (successor in interest to Bank of America, N.A.) to satisfy the payoff of the first deed of trust in full of its secured loan. A review of the Preliminary Estimate Seller's Settlement Statement shows that the sales price may include both the payoff of the first and second deed of Trust.

The Trustee does not oppose the Motion, provided all liens of record are paid in the sale or agree to the transaction, Debtor makes clear what lienholder holds the second deed of trust on the property, and Debtor makes clear the payoff amount. Also, the lienholder for the second deed of trust, if not Ditech, needs to be listed in the preliminary seller's statement.

DISCUSSION

The Trustee's Response is well-taken. Based on the Debtor's Schedule D, it appears that JPMorgan Chase Bank, N.A. also holds a secured claim against the Property in the amount of $12,500.00. It is not clear which of these creditors holds the first deed of trust. Debtor's Motion first states that the "Property is secured by a second deed of trust and note in favor of Ditech as successor in interest to Bank of America, N.A. in the approximate amount of $261,064.33." The Motion later states, "The sale proceeds will be divided as follows: $259,288.33 to Ditech (successor in interest to Bank of America N.A.) on the first deed of trust in full satisfaction of its secured loan." JPMorgan Chase Bank's secured claim is not mentioned anywhere in the Motion, Purchase Agreement, or Estimated Closing Statement.

Though Debtor could likely "fix" these issues, no Reply addressing them was filed as of the court's 8:00 p.m., December 4, 2016, review of the Docket.

At the December 6, 2016 hearing, Debtor's counsel advised the court xxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by William Kenitzer, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxxxxxxxxxxxx.

42. 16-20374-E-13 MBS-3 — KURT/BARBARA DELACAMPA — Michael Croddy — MOTION TO COMPEL — 11-3-16 [72]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 3, 2016. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Motion to Compel Surrender 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing, ----------.

The Motion to Compel Surrender is denied.

The Motion filed by Vicki Bell ("Creditor") requests the court to order Kurt Delacampa and Barbara Delacampa ("Debtor") to surrender property commonly known as 4522 Midway Road, Vacaville, California ("Property"). The Property is encumbered by the liens of Nationstar Mortgage (as successor to Nationwide Mortgage) and Creditor, securing claims of $281,338.99 and $319,869.42, respectively. Amended Schedule A/B values the Property at $560,000.00. Dckt. 37.

The Motion relies on Section 2.10 of the Amended Plan confirmed on August 19, 2016, in stating that the Plan proposes to surrender Debtor's interest in the Property to Class 3 creditors Nationwide Mortgage and Creditor. *See* Dckts. 45 & 69. Creditor moves for that surrender. Creditor also moves for an order to permit an immediate photographic examination of the Property by a realtor. Creditor is concerned that the Property may be damaged before surrender and seeks to maintain a record of the Property's state.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 22, 2016. Dckt. 78. The Trustee objects to Creditor pursuing two motions in one, both with unclear legal authority. The Trustee states that Creditor should have filed two motions according to Local Bankruptcy Rule 9014-1(d)(1), except for when alternative relief is sought.

The Trustee believes that Creditor seeks relief that would require an adversary proceeding under Federal Rule of Bankruptcy Procedure 7001 as to surrendering the property. Whether Creditor could obtain an order to compel examination under Federal Rule of Bankruptcy Procedure 2004 is not certain to the Trustee, but the Creditor has not proceeded under that rule in this Motion, and the legal basis for the discovery request is unclear. The Trustee does not know why Creditor has not commenced or continued foreclosure proceedings in state court.

Lastly, the Trustee notes that if Debtor is not surrendering the collateral or making a reasonable attempt to do so, then the Debtor would appear to be in breach of the Plan and may be subject to dismissal or conversion if such a motion is brought. The Trustee requests that the Motion be denied.

DISCUSSION

Local Bankruptcy Rule 9014-1(d)(1) states:

> Except as otherwise provided in these rules, every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion. Without incorporation by reference to any other document, exhibit or supporting pleading, the motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.

Creditor has moved for an order to compel Debtor to surrender the Property and for an order permitting Creditor to have a photographic record of the Property created by a realtor. Those are two separate requests, and though they are related, they are not alternative forms of relief to one another; they

are sequential requests. Thus, the Motion is in violation of Local Bankruptcy Rule 9014-1(d)(1). The Trustee's opposition is well-taken.

Additionally, Local Bankruptcy Rule 9014-1(d)(6) requires that "[e]ach motion, opposition, and reply shall cite the legal authority relied upon by the filing party." A review of the Motion shows that no legal authority has been cited Creditor. The Motion pleads with particularity that it relies upon Section 2.10 of the confirmed Amended Plan, but the Creditor has not directed the court to any bankruptcy rule (either local or federal) or Code section upon which the requested relief may be granted. Local Bankruptcy Rule 1001-1(g) states that failure to comply with the Local Rules, Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, or any court order is a ground for sanctions, including dismissal of a motion.

REVIEW OF GROUNDS AND RELIEF STATED IN MOTION

The court begins with the grounds stated with particularity and relief (Fed. R. Bankr. P. 9013) actually stated in the Motion. The court summarizes the relevant grounds and relief as follows:

A. Debtor filed this Chapter 13 Case on February 2, 2016.

B. Under the proposed First Amended Plan, Debtor intends to surrender the property that secures Movant's claim.

C. The First Amended Plan was confirmed on August 19, 2016. Under the terms of the confirmed First Amended Plan, the automatic stay has been modified to allow Movant to exercise her rights against the property.

D. Movant has already "commenced preparations to either foreclose on the judicial lien" or work with a senior lien holder.

E. Though surrendered, Debtor is not taking any steps to vacate the property.

F. Movant demands that the court order that Debtor "surrender" the property and vacate it immediately.

G. Movant also seeks an order for the internal and external inspection of the property.

Motion, Dckt. 72.

No points and authorities is filed in support of the motion and regarding how the court can "order" the "surrender" of the property that secures Movant's claim. It appears that Movant seeks to use the confirmed plan as a pre-foreclosure/lien sale right for Movant to take the collateral without complying with applicable state law.

The terms of the confirmed plan for "surrender" allow Movant and other creditors to foreclose/conduct a lien sale on the property. It does not "give" the property to Movant. Debtor stills owns

the property and has the right to possess the property. Movant must exercise her rights to terminate Debtor's ownership of the property and Debtor's right to remain in possession of the property it owns.

Therefore, the Motion to order Debtor to turn over the property, the collateral securing Movant's claim, is denied. Movant has shown no right to possess the property prior to foreclosing on its lien.

Additionally, as pointed out by the Trustee, Movant is seeking injunctive relief (an order compelling someone to do, or not do, something). Injunctive relief must be sought through an adversary proceeding. Fed. R. Bankr. P. 7001. Again, the court cannot find any right or claim asserted by Movant to possess the property prior to conducting a foreclosure/lien sale, so the court will not re-characterize this motion as a "complaint" and convert this contested matter to an adversary proceeding.

The second part of the Motion requests that the court order an "inspection" of the property. Movant may exercise her rights to conduct a 2004 examination of Debtor and/or property of the bankruptcy estate or Debtor. Movant may properly seek such an examination. The court will not order it pursuant to this Motion for an order to deliver possession of collateral to creditor.

The Motion is denied, without prejudice to Movant exercising her rights as provided in the Confirmed Plan or conducting discovery in this bankruptcy case as appropriate.

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 Compel Surrender of Real Property filed by Vicki Bell ("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 to Compel Surrender is denied.

43. 13-31975-E-13 PLC-6 | **JACK/LINDA GANAS** **Peter Cianchetta** | **CONTINUED MOTION TO MODIFY PLAN** **9-28-16 [157]**

Tentative Ruling: 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.

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, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2016. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 Motion to Confirm the Modified Plan is denied.

Jack Ganas and Linda Ganas ("Debtor") filed a Motion to Confirm Amended Plan September 27, 2016. Dckt 160.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition to the Instant Motion on October 18, 2016. Dckt. 167. The Trustee Opposes Confirmation on the basis that the Trustee is uncertain of the Debtor's ability to pay. The Debtor did not submit Supplemental Schedules I and J in support of the reduced plan payment. However, the Trustee calculates the Plan will complete in approximately six months excluding the lump sum payment.

NOVEMBER 1, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on December 6, 2016. Dckt. 179.

DISCUSSION

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

The Trustee's Objection is well-taken. A review of the docket shows that Debtors have failed to file Amended Schedules I and J in support of the reduced plan payment. Without accurate Schedules and information regarding income and expenses, it is impossible to determine the feasibility of Debtor's Plan.

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

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

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

44. **16-26475-E-13** **LOUIS/LYDIA CAMPOS** **MOTION TO VALUE COLLATERAL OF CENLAR**
DBJ-1 **Douglas Jacobs** **10-11-16 [13]**

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 11, 2016. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim of Cenlar has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Cenlar is granted, and the secured claim is determined to have a value of $0.00.

The Motion to Value filed by Louis Campos and Lydia Campos ("Debtor") to value the secured claim of Cenlar ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 12 Hastings Avenue, Biggs, California ("Property"). Debtor seeks to value the Property at a fair market value of $116,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a**

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

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

No Proof of Claim Filed

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

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on November 22, 2016. Dckt. 29. The Trustee states that his search of the Butte County recorder does not reveal a recorded deed of trust for Creditor against Debtor between November 15, 2002, and November 22, 2016. The Trustee did find a deed of trust for CALFHA Mortgage Assistance Corporation, though.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $128,500.00. Creditor's second deed of trust secures a claim with a balance of approximately $51,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore, no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim of Cenlar filed by Louis Campos and Lydia Campos ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Cenlar secured by a second in priority deed of trust recorded against the real property commonly known as 12 Hastings Avenue, Biggs, California ("Property"), 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 $116,000.00 and is encumbered by a senior lien securing a claim in the amount of $128,500.00, which exceeds the value of the Property that is subject to Creditor's lien.

45. 16-20777-E-13 PGM-3 | **MICHELE WILLIAMS** **Peter Macaluso** | **MOTION TO CONFIRM PLAN** **10-19-16 [63]**

Tentative Ruling: 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Amended Plan is denied.

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

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 4, 2016. Dckt. 69. The Trustee opposes confirmation on the basis that:

A. Michelle Williams's ("Debtor") Second Amended Plan and Amended Schedule C still fail to resolve Trustee's Objection to Confirmation sustained by the court at the hearing held May 3, 2016. *See* Dckt. 65.

The Debtor has not resolved the Chapter 7 Liquidation Analysis issue. Schedule C was amended adding the following assets: cash on hand; checking Wells Fargo; savings; Debtor's refund from Chapter 13 Trustee after dismissal of Case No. 14-23385; and 401K retirement. The Debtor failed to list the amount of the exemption claimed. Rather, she selected "100% of fair market value, up to any applicable statutory limit." Debtor's non-exempt equity remains $8,092.06, and Debtor proposes to pay unsecured creditors a 0% dividend.

B. The Second Amended Plan proposes payments of $18,500.00 through October 2016; four payments of $2,900.00 starting November 2016; then $3,550.00 for forty-eight months. Debtor's Schedule J lists Debtor's net income in the amount of $2,900.44. Debtor's Declaration states "Additionally the increase in payment will come from the payoff of 401k loans."

The Trustee notes that Schedule J has two 401K loans totaling $108.02 per month. "Loan 1 has 12 months remaining at $81.54[.] Loan 2 has 45 months remaining at $26.48 - nominal increase. Loan 3 has been paid at the time of filing and was reduced in deductions." Dckt. 18, Schedule J, Line 24.

Debtor's recently filed Schedule C conflicts with the information on Schedule J. Schedule C states "401k loan #1 $81.54 for 4 yrs ($4000), and #2 $93.80 for 3.5 yrs ($3500)."

Debtor does not have the ability to increase her plan payments by $650.00 per month once the 401k loans are paid in full. Additionally, it is not clear to the Trustee when the loan will be paid in full as the dates of the completion differ from Schedule to Schedule.

DEBTOR'S REPLY

Debtor filed a Reply on November 29, 2016. Dckt. 72. Debtor states that an Amended Schedule C, which exempts dollar amounts for each asset, will be filed before the hearing. Debtor also states that the Loan 2 amount of $26.48 will reflected on Amended Schedule C. That amount is listed on Schedule J, and the other entry for it was a scrivener's error.

DISCUSSION

The Trustee's objections are well-taken. A review of the docket shows that no Amended Schedule C has been filed with the court.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). While Debtor has reported non-exempt equity in the amount of $8,083.06, and the Debtor is proposing a 0% dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there may be upward of $8,092.06 in non-exempt equity.

The Debtor's Amended Schedule J, filed on February 25, 2016, lists a $2,900.44 monthly net income, while the Plan provides for a step-up in payments from $2,900.00 to $3,550.00 in November 2016. Debtor indicates that the increase in payment will come from the payoff of 401k loans. Debtor's Amended Schedule C indicates that 401k loan #1 requires payments of $81.54 for four years, however, and 401k loan #2 requires payments of $93.80 for three years and six months. Taken together, that suggests the Debtor cannot afford the step-up in plan payments and that the Plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

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

The court shall 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.

46. 16-27277-E-13 SDH-1 | **KENNETH/SANDRA WILSON** | **Scott Hughes** | **MOTION TO VALUE COLLATERAL OF MAZDA CAPITAL SERVICES** | **11-2-16 [12]**

Final Ruling: No appearance at the December 6, 2016 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 Chapter13 Trustee, Creditor, and Office of the United States Trustee on November 2, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim of Mazda Capital Services has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Mazda Capital Services is granted, and the secured claim is determined to have a value of $11,236.00.

The Motion filed by Kenneth Wilson and Sandra Wilson ("Debtor") to value the secured claim of Mazda Capital Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Mazda 6 with 98,000 miles ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,236.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor's Motion and Declaration state that the loan was a purchase money security interest entered into more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,825.91. Debtor fails to indicate when the loan was incurred, however, merely stating that it was more than 910 days before the case was filed. Nevertheless, Debtor Sandra Wilson has provided a Declaration sworn under penalty of perjury that the purchase money security interest was entered into more than 910 before filing this bankruptcy case.

The Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $11,236.00. *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 to Value Secured Claim of Mazda Capital Services filed by Kenneth Wilson and Sandra Wilson ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Mazda Capital Services ("Creditor") secured by an asset described as a 2014 Mazda 6 with 98,000 miles ("Vehicle") is determined to be a secured claim in the amount of $11,236.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $11,236.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

47. **16-26686-E-13** **BENJAMIN SANTOS** **MOTION TO VALUE COLLATERAL OF**
AMJ-2 **Alberto Montefalcon** **TRI COUNTIES BANK**
11-7-16 [17]

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on November 4, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim of Tri Counties Bank has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Tri Counties Bank is granted, and the secured claim is determined to have a value of $0.00.

The Motion to Value filed by Benjamin Santos ("Debtor") to value the secured claim of Tri Counties Bank ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 9948 Spring View Way, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $486,596.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

FN.1. The moving party filed the Motion, Declaration, Notice, Exhibits, and Proof of Service in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the

Local Rules, as required by Local Bankruptcy Rules 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court. (Some running hundreds of pages.) It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 3-1 filed by Tri Counties Bank appears to be the claim that may be the subject of the present Motion.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on November 22, 2016. Dckt. 30.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $529,550.00. Creditor's second deed of trust secures a claim with a balance of approximately $98,557.40. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore, no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim of Tri Counties Bank filed by Benjamin Santos ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Tri Counties Bank secured by a second in priority deed of trust recorded against the real property commonly known as 9948 Spring View Way, Elk Grove, 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 $486,596.00 and is encumbered by a senior lien securing a claim in the amount of $529,550.00, which exceeds the value of the Property that is subject to Creditor's lien.

48. **16-26686-E-13** **BENJAMIN SANTOS**
JHW-1 **Alberto Montefalcon**

OBJECTION TO CONFIRMATION OF PLAN BY MERCEDES-BENZ FINANCIAL SERVICES USA, LLC
11-9-16 [25]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the U.S. Trustee on November 9, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 offer 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. At the hearing, ----------.

The Objection to Confirmation of Plan is sustained.

Mercedez-Benz Financial Services USA LCC, the Creditor holding a secured claim, opposes confirmation of the Plan on the basis that:

A. Debtor lists the Vehicle in Class 2 of the proposed Chapter 13 Plan. Debtor incorrectly lists "N" under Purchase Money Security Interest personal property, though. Creditor holds a purchase money security interest and is entitled to pre-confirmation adequate protection payments. Creditor requests that Debtor amend the Plan to provide for "Yes" for Purchase Money Security Interest.

B. Debtor's proposed Plan fails to provide for the present value of Creditor's secured claim by failing to provide the proper "formula" discount rate, and Creditor's claim is entitled to interest on the principal amount due at the time of the filing of the petition.

Creditor asserts that in the instant matter, the national prime rate of interest as of November 7, 2016 was 3.5%, and adjusting the interest rate upward is appropriate in this case because:

1. Debtor's disposable income limits Debtor to a stringent budget ($0.00 for anything beyond scheduled expenses), placing Debtor at a high risk of default under the Plan. If Debtor falls behind, Debtor will be unable to suspend payments or extend the Plan further, rendering the Plan a failure;

2. The Vehicle is a rapidly depreciating asset that loses value with continued use and time; and

3. The Plan provides for repayment of Creditor's secured claim over a period of time which extends approximately fourteen months beyond the original terms of the Contract, exposing Creditor to additional risk of default.

Creditor requests that the court adjust the national prime rate of interest of 3.5% upward to 6.5%.

The Creditor's objections are well-taken.

The objecting creditor, who holds a security interest in personal property, alleges that the Plan violates 11 U.S.C. § 1326(a)(1)(C) because the Debtor fails to provide for pre-confirmation adequate protection payments on Creditor's purchase money security interest.

Plan payments must begin not later than thirty days after the filing of the plan or order for relief, whichever is earlier, to certain secured creditors. *See* 11 U.S.C. § 1326(a)(1)(C). Within this time period, a Chapter 13 Debtor is required to make adequate protection payments directly to a creditor holding an allowed claim secured by personal property to the extent that the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief. *Id.* Plan payments are reduced by the amount of the adequate protection payments, and the trustee must be provided with evidence of the amount and dates of the payments. *Id.* Such payments are only to be provided to a creditor holding an allowed claim. 11 U.S.C. § 502(a). Here, Creditor filed Proof of Claim No. 2-1 with no objection to date. Thus, the claim is deemed allowed. *Id.* Creditor holds a purchase money security interest and is entitled to pre-confirmation adequate protection based on the rate of the collateral's depreciation.

Creditor argues that the interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to many bankruptcy cases, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.5%, plus a 1.5% risk adjustment, for a 5% interest rate. The Objection to Confirmation of the Plan on that basis is sustained. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

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 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 to confirmation the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

49. 16-22088-E-13 JAMIE CELAYA
TLA-2 Thomas Amberg

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
10-11-16 [35]

Final Ruling: No appearance at the December 6, 2016 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, Creditor, and Office of the United States Trustee on October 11, 2016. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges is overruled without prejudice.

Jamie Celaya ("Debtor") objects to the claim for post-petition fees, expenses, and charges filed by Ocwen Loan Servicing, LLC ("Ocwen") (for HSBC, et al) filed on October 4, 2016. Debtor argues that the claim for $400.00 of post-petition fees includes no explanation except for "Review of Plan and Notice of Appearance." Debtor asserts that Creditor has provided no breakdown for parties to review and requests that Ocwen provide a more-detailed hourly statement of who performed what specific tasks at what hourly rates to reach the total $400.00 fee.

Additionally, Debtor notes that the final page of the claim lists the wrong debtor. The page lists "Caleb Morin." On top of the vaguely described fee, Debtor is not sure if Ocwen's charges even relate to Debtor.

This Objection is a Contested Matter objecting to the claim being asserted in this bankruptcy case by Ocwen. Federal Rule of Bankruptcy Procedure 3002.1(e) sets forth the procedure to object to any post-petition fee, expense, or charge asserted to be required by an underlying agreement.

The court has reviewed the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed on October 4, 2016, for HSBC Bank USA, N.A., as Trustee, the actual creditor ("Creditor") asserting a claim in this case. Proof of Claim No. 8. The information in the Notice is summarized accordingly:

A. Attorneys fees incurred on April 14, 2016, in the amount of $400.00.

B. Filed by Creditor's authorized agent April Harriott on October 4, 2016.

C. Invoiced from Creditor to Robertson Anschutz and Schneid PL on April 21, 2016.

D. Described as "Review of Plan and Notice of Appearance."

E. First Debtor Name: Caleb Morin.

F. Case Number: 16-22088.

Debtor has raised two possibly valid issues with the Notice. First, the description of the fees owed is woefully lacking. Debtor acknowledges that a reasonable fee may be charged, but the Notice does not provide enough information for any party, especially the court, to determine if the fee is reasonable. If Creditor merely looked at Debtor's Plan quickly and decided to tell someone to enter a Notice of Appearance, then $400.00 may not be reasonable for so little work. At this point, though, the court cannot tell if the work done was reasonable to justify the post-petition fee or not because Creditor has not provided any details.

Second, the final page of the Notice names the wrong debtor. The case number is correct, but the name is wrong, which leaves open the possibility that either the name is wrong or the case number is wrong. As written, the Notice cannot be correct, however. That error and the Notice's vagueness are sufficient grounds for the court to sustain the Objection.

Unfortunately, Debtor has not filed this Motion to address the post-petition fees asserted by Creditor, but only names the loan servicer, Ocwen Loan Servicing, LLC. The Motion does not seek to determine a case or controversy against the real party in interest, Creditor, (as required by Art. III, Sec. 2 of the U.S. Constitution), but only seeks to litigate with Ocwen individually. Just as Ocwen Loan Servicing, LLC cannot bring suit in its own name, hiding the identity of its creditor client, a debtor cannot sue Ocwen as the proxy for a creditor.

Creditor is not named as the party against whom relief is sought. Creditor was not served with the motion. Cert. of Serv., Dckt. 38. Even if Creditor were named in the Objection as the target party, the court has not been presented with any evidence that Creditor has been properly served as required by Federal Rules of Bankruptcy Procedure 7004 and 9014.

The Objection is overruled without prejudice.

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

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

The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by 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 Objection is overruled without prejudice.

50. 16-26590-E-13 LA TONYA ROSBORO
Christian Younger

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
11-3-16 [15]

Tentative Ruling: 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on November 3, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Objection to Confirmation of Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Confirmation of Plan is sustained, and the Plan is not confirmed.

Lakeview Loan Servicing, LLC, ("Lakeview") files this objection stating that it "holds" a note that was given to Flagstar Bank, FSB, by a "Webster Rosboro, Jr." on January 19, 2013. No declaration is provided by Lakeview, and no explanation is provided as to what is meant by saying that Lakeview "holds" a note. It is not clear from the objection as to whether Lakeview **Loan Servicing**, LLC is the loan servicer (agent) for the actual creditor in this case, or Lakeview owns the note. It is alleged in the Objection that the

note is endorsed in blank and in Lakeview's possession, but nobody has provided any personal knowledge testimony of those facts. Fed. R. Evid. 601, 602.

The Objection by Lakeview is summarized as follows:

A. La Tonya Rosboro's ("Debtor") Plan fails to provide for Lakeview's claim. The Plan fails to provide for the pre-petition arrears owed to Lakeview in the amount of $974.68 and does not provide for the regular monthly mortgage payments to Lakeview. FN.1.

FN.1. The objecting party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the objecting party failed to use a Docket Control Number. That is not correct. The Court will consider the Objection, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to overrule the Objection. Local Bankr. R. 1001-1(g), 9014-1(l).

DEBTOR'S RESPONSE

Debtor filed a Response on November 11, 2016. Dckt. 19. Debtor emphasizes that this case was filed on October 1, 2016, and on October 3, 2016, Debtor paid the October mortgage payment and Creditor issued a mortgage statement showing that the account was current and that the next payment would be due on November 1, 2016. Debtor also stresses that Creditor's Objection was created on October 27, 2016, but not filed until November 3, 2016.

Also, Debtor rejects the assertion that she must provide for Creditor's claim in her Plan. Debtor states that she is not listed on the promissory note or the monthly mortgage statement, and the debt does not appear on her credit report. Nevertheless, she states that she included the debt on Schedule A/B. FN.2.

FN.2. This bastardizing of Schedule A/B to sneak in possible "creditors" foreshadows the nature of this Objection and Opposition in what is becoming a troubling set of arguments and contentions.

DISCUSSION

Lakeview asserts a claim of $974.68 in its Objection to Confirmation, equal to one month's mortgage payment. *Compare* Exhibit A, Dckt. 20, *with* Exhibits A & B, Dckt. 17. Lakeview (or the actual creditor if Lakeview is the servicer) has failed to file a proof of claim, despite its assertion that one is in the works. Debtor's Schedule D does not list Lakeview's claim, or that of any other creditor for a debt secured by property of the Debtor, and neither does Schedule E/F list Lakeview.

Debtor has included a reference to a mortgage debt on Schedule A. Debtor interliniates that she owns in fee simple real property located at 621 Fulmar Drive, Suisun City, California. Debtor lists $177,669.55 as the property's value, of which she claims to own the full amount and has exempted $175,000.00 under California Code of Civil Procedure § 704.730 on Schedule C. In the notes accompanying the Schedule A line for the property, Debtor states:

A. "Debtor's name is on the title but not on the loan."

B. "Loan is with Flagstar for $142,330.45"

C. "FMV: $320,000."

The unauthenticated deed of trust provided as an Exhibit A has the name "La Toya Rosboro, his wife, written after the name "Webster Rosboro." Exhibit 2, Dckt. 17. On the signature page of the Deed of Trust is a signature for Debtor, as well as initials on each page for Debtor.

In response to the Questions in Part 1 of the Statement of Financial Affairs Debtor states that she is married. Dckt. 1 at 33. Debtor also states that in 2016 Debtor is receiving retirement income from her Spouse. Statement of Financial Affairs Part 1, Question 5; *Id.* On Schedule I, Debtor lists having a non-debtor spouse with monthly income of $2,990.00 (pension or retirement income). *Id.* at 28–29.

Going tit-for-tat with Lakeview, Debtor fails (or refuses) to provide any testimony or authenticate the exhibits for the response to the Objection.

It appears that Debtor invites, and the court does infer, that her husband in Webster Rosboro and she and her husband are residing in the house that secures the claim Lakeview is asserting in this case.

Beginning with the Bankruptcy Code, a claim is defined as follows:

"(5) The term 'claim' means--

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured."

11 U.S.C. § 101(5). The Bankruptcy Code defines "creditor" to be:

"(10) The term 'creditor' means–

> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or
>
> (C) entity that has a community claim."

11 U.S.C. § 101(10). The term "community claim" is further defined as:

> "(7) The term 'community claim' means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case."

11 U.S.C. § 101(7). Property of the estate as defined in 11 U.S.C. § 541(a)(2) as:

> "(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is–
>
> (A) under the sole, equal, or joint management and control of the debtor; or
>
> (B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable."

California law provides that community property is liable for a debt incurred by either spouse, whether before or during marriage. Cal. Fam. § 910.

It appears, based on the Schedules in this case, that there is a "claim" (as defined by the Bankruptcy Code) for the creditor owning the note that has been advanced by Lakeview and the debt admitted by Debtor on Schedule A/B.

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

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

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

A. provide a treatment that the debtor and secured creditor agree to (11 U.S.C. § 1325(a)(5)(A)),

B. provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan (11 U.S.C. § 1325(a)(5)(B)), or

C. surrender the collateral for the claim to the secured creditor (11 U.S.C. § 1325(a)(5)(C)).

These three possibilities are relevant only if the plan provides for the secured claim, though.

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

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

The Objection by Lakeview is well-taken. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). As instructed by the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, a federal judge cannot just blindly grant relief when it does not comply with the law merely because there is no "opposition." 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14 (2010). Here, Debtor admits there is a claim, but refuses to provide for it in the Plan. Debtor is willing to accept all of the benefits of bankruptcy, but eschews any of the minimum responsibilities, such as paying the debt secured by property Debtor is protecting in the bankruptcy case.

This denial raises the specter of whether Debtor has filed this case in good faith, is prosecuting this case in good faith, has filed the plan in good faith, and whether Debtor can ever prosecute a bankruptcy case in good faith concerning this property and the debt secured by it.

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 the Objection is sustained, and the Chapter 13 Plan is not confirmed.

51. **16-27697-E-13** **BRIAN OKAMOTO** **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 **Peter Macaluso**
11-22-16 [8]

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 22, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Brian Okamoto ("Debtor") seeks 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 the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 16-22547) was dismissed on September 2, 2016, after Debtor failed to obtain confirmation of an amended plan within a seventy-five day time frame established by the court. *See* Order, Bankr. E.D. Cal. No. 16-22547, Dckt. 26, September 2, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on November 23, 2016. Dckt. 12. The Trustee seizes upon Debtor's statement in the Motion that this case is a "skeleton filing." The Trustee is unable to ascertain if the case is confirmable or if the Debtor's circumstances have changed because no Plan and no Schedules have been filed.

DISCUSSION

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was paying $1,752.00 per month, instead of $2,500.00. Additionally, Debtor failed to provide his attorney with information verifying an increase in his salary or a change in his living expenses.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

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

In re Elliot-Cook, 357 B.R. at 814–15.

Debtor has not provided the court with any reason to believe that his situation has changed. Debtor was paying $748.00 per month less than required in the prior case, and Debtor has not provided any explanation as to why other than to say that it was an error on his part. Additionally, Debtor has not explained why he did not provide required financial documents to his attorney.

In reviewing Debtor's testimony, it appears that he has merely taken a stock declaration to support confirmation of a Chapter 13 Plan and has stuck that in front of the court for this motion. However, Debtor does provide some testimony, buried in paragraphs 10–12 actually addressing what occurred in connection with the prior case and what has changed now. Dckt. 10. If the testimony is truthful and the Debtor actually means what has been written in the Declaration, this case may proceed differently.

Debtor has filed his Schedules, Statement of Financial Affairs, and a Plan on December 1, 2016 (just under the wire for this hearing, but at least prior to the hearing). The Schedules and Statement of Financial Affairs at least facially appear to have specific detail to indicate a meaningful attempt to provide accurate information under penalty of perjury. For the proposed plan, Debtor's plan starts with six payments of $2,300.00 per month, then increases to $2,440.00 for four months, then $2,720.00 for three months, and ultimately $2,875.00 for forty-seven months. Substantially all of the monthly plan payment will go to cure a $40,421.33 arrearage and make a $1,458.14 monthly mortgage payment. Debtor intends to "lien strip" a debt secured by a junior lien on his residence and pay $17,000.00 of nondischargeable taxes.

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

The Motion is granted.

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

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

52. 16-27761-E-13 CYB-1 | **DORIAN BELLAN** **Candace Brooks** | **MOTION TO EXTEND AUTOMATIC STAY O.S.T. 11-28-16 [10]**

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

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 November 28, 2016. By the court's calculation, 8 days' notice was provided.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 offer 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. At the hearing ----------.

The Motion to Extend the Automatic Stay is granted.

Dorian Bellan ("Debtor") seeks 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 the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-24805) was dismissed on November 7, 2016, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 15-24805, Dckt. 42, November 7, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was operating under too tight of a budget and also forgot how many payments had come due. Those two factors coupled together to cause a delinquency that led to the case being dismissed for failure to make plan payments.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's

cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 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, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

A. Why was the previous plan filed?

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

In re Elliot-Cook, 357 B.R. at 814–15.

Here, Debtor has explained that a tight budget and confusion about how many payments were due caused the last case to be dismissed. Since that case, Debtor has adopted more realistic Schedules, and Debtor has more income to help make plan payments. The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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