

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 12, 2016 at 2:00 P.M.

1. [15-28200](#)-C-13 JEFFREY/EVE PRITCHARD MOTION TO VALUE COLLATERAL OF
CDN-1 Clark Nicholas BENEFICIAL CALIFORNIA, INC.
12-4-15 [[19](#)]

Also #2

Final Ruling: No appearance at the January 12, 2016 hearing is required.

The Chapter 13 Debtor having filed a "Withdrawal of Motion" for the pending Motion to Value Collateral, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Motion..**

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

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

A Motion to Value Collateral having been filed by the Chapter 13 Debtor, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Value Collateral is dismissed without prejudice.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. The plan relies on a pending motion to value collateral to be heard on January 12, 2016.
2. Debtor is \$87 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$87 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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

3. [15-28300](#)-C-13 TERESA GLESSING
DPC-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-10-15 [[16](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2015. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis of uncertainty as to whether the debtor has proven ability to make plan payments:

1. Debtor lists a wrong death annuity from deceased mother with a value of \$20,000 but does not provide details of when and to whom the proceeds are paid.
2. At the 341 meeting, Debtor testified that she paid Travis credit Union \$100,000 but that the payment was not acknowledge.
3. Debtor admitted to gifting \$7,000 to her step-mother and \$3,000 to grandmother. Trustee is not certain as to the date of these transfers and thus cannot yet determine if they are avoidable.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The debtor appears to be including in section 2.13 Class 5 of the proposed plan a post-petition claim for the IRS in the amount of \$4,551 for the tax year 2013, but the creditor has not filed a claim for tax year 2013.

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

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

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

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

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

Also #6

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 17, 2015. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The chapter 7 trustee, J. Michael Hopper, entered a settlement with the debtor whereby the debtor would pay the trustee monthly payments to retain a residence in which the debtor had claimed a homestead exemption.

Creditor J. Michael Hopper opposes confirmation of the Plan on the basis that the plan treats the Chapter 7 Trustee as a secured creditor against the subject property and proposes to make monthly payments due under the settlement. The plan mischaracterizes the Trustee's interest. The subject property is still property of the estate. The settlement is more akin to an executory contract to be assumed or rejected.

As Creditor's concern highlights, 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 Creditor J. Michael Hopper 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor did not appear at the First Meeting of Creditors held on December 10, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
3. Debtor is \$1,040 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,040 is due on December 25,

2013. Debtor has paid \$0.00 into the plan to date.

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

Debtor's Response

Debtor does not oppose the objection to confirmation but requests time to file an amended plan and otherwise comply with requirements. The case was transferred from the Northern District and Debtor was not receiving court related mail. Debtor has now submitted a change of address.

Discussion

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

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

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

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

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

Final Ruling: No appearance at the January 12, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on September 12,
2013 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2015. 28 days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Dismiss.

Creditor Timothy H. Stearns seeks dismissal of Debtor's case on the basis that the purpose in filing this case is solely to defeat the pending state court action for breach of contract and to postpone the one-day court trial that was scheduled for December 4, 2015.

The Chapter 13 Trustee has not opposition to the Motion.

Debtor's Opposition

Debtor claims that it is his legal right to file a bankruptcy case.

Discussion

Creditor has not submitted conclusory proof that Debtor filed this case in bad faith. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case
filed by Creditor Timothy H. Stearns 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.

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

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

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

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

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

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

The Motion to Incur Debt is denied.
--

The motion seeks permission to purchase a 2014 Chevrolet Impala LT Sedan with 15,000 miles, which the total purchase price is \$16,634.41 with 15.99% interest, with monthly payments of \$330.36. Debtor intends to trade in his 2008 Chrysler Sebring for \$1,500, which has broken down.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c) (1) (B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c) (1) (A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. In re Clemons, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Previously

At the hearing on December 8, 2015, the court made the following notes:

No plan has been confirmed in this Case. Recently, the court denied confirmation of the proposed First Amended Plan. Order, Dckt. 100. For that Plan, Debtor was able to fund only \$100.00 a month for the last 58 months of the plan. Dckt. 71. It will take approximately the first twenty-seven months of payments to pay counsel the balance of \$2,500.00 owed for attorneys' fees as administrative expenses. (Allowing 6% for Chapter 13 Trustee fees.) An additional \$4,480.02 must be paid to the Internal Revenue Service for priority taxes, which is projected to take an additional, which the court projects will take an additional forty-eight months. Just on these two disbursements alone, it appears that the Debtor will take seventy-five months to pay the plan.

Debtor states that he has monthly gross income of \$3,167.00. Schedule I, Dckt. 1. After deductions for taxes, Social Security, mandatory retirement contributions, insurance, and domestic support obligations, Debtor is left with \$1,610.00 in monthly take home pay. *Id.*

On October 9, 2015, Debtor filed an Amended Schedule J stating his expenses. Dckt. 66. This was in connection with seeking to confirm the First Amended Plan, not for approval of financing. Debtor states that his necessary expenses total \$1,507.00 a month, which left only \$103.00 to fund a plan. *Id.*, p. 5. Some of these purported reasonable expenses are questionable, including: (1) \$185 for food and housekeeping supplies (listing Debtor and two children); (2) \$0.00 for clothing, laundry, and dry cleaning; (3) \$0.00 for medical and dental expenses; and (4) \$100.00 for transportation (at \$2.45 a gallon, and allowing for \$25 a month for repairs and registration expense, \$75 a month would buy 30 gallons of gas. At 20 miles to the gallon, Debtor could drive 20 miles per day).

In support of the present Motion, Debtor states that he can now add on a \$440.36 payment, and still have \$102.64 in Monthly Net Income for a plan. Exhibit C, Proposed Amended Schedule J; Dckt. 96. To achieve this result, Debtor reduces his rental expense, stating that he will now share living accommodations. Debtor's transportation expense remains at \$100, and Debtor does not increase his insurance expense (presumably the insurance for a 2014 vehicle subject to a creditors lien will be higher than a 2008 vehicle).

While Debtor states that he and the lender, who is charging 15.99% interest believe that this is a fair interest rate to purchase the 2014 vehicle, Debtor offers no explanation and no testimony as to the other options for Debtor and why this purchase and the 15.99% interest financing is reasonable for this Debtor. In light of the Debtor's financial information, the apparent inability to fund a plan, and this lender requiring an interest rate of 15.99%, it appears that the market place questions Debtor's ability to repay this loan. Rather, these financial terms indicate that the lender is needing to pile on substantial interest in anticipation of a default.

The court continues the hearing to afford the Debtor to revisit with the lender the reasonableness of the loan and the actual alternatives which may exist for a vehicle consistent with Debtor's ability to pay.

Discussion

The docket does not reflect an amended loan agreement. As detailed above, the court finds that the proposed credit, based on the unique facts and circumstances of this case, is unreasonable.

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 Incur Debt 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 to Incur Debt is denied.

Also #11

Final Ruling: No appearance at the January 12, 2016 hearing is required.

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

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

Below is the court's ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on November 18, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Sell Property 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.

The Motion to Sell Property is continued to January 26, 2016 at 2:00 p.m.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 2671 Waverly Way, Fairfield, California

Debtor has negotiated a short sale of the subject property acceptable to both Nationstar Mortgage and Citi Mortgage and seeks the Court's approval of the sale. The proposed sale price of the property is \$220,000 cash. The buyer is David Assell. No net proceeds will be realized by Debtor or available to the Trustee. All creditors with liens and security interests encumbering the subject property which are not voluntarily released will be paid in full simultaneously with the transfer of title to the buyer or held by the escrow holder until agreement by the parties or further court order. All costs of

sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court:
xx.

U.S. Bank, N.A.'s Reply

Secured Creditor U.S. Bank, N.A., holder of the senior lien secured by the subject property, requests additional time to review Debtor's short sale application and assess the current value of the property.

Debtor failed to set forth any evidence of a short sale application submitted to Secured Creditor, much less acceptance and approval of the sale. However, Secured Creditor has confirmed that his loan is under review for a short sale but final approval has not yet been provided.

Debtor's Reply

Debtor does not oppose approval of the short sale including this provision and further confirms that she will not conclude any short sale without first obtaining approval from all creditors holding a secured interest in the subject real property.

Trustee's Opposition

Trustee is unaware why the Debtor would be entitled to receive \$10,000 for HAFA Relocation from the net proceeds of the sale. Further, Trustee is opposed to Debtor's attorney received legal fees outside of the plan, i.e. \$2,200 from the escrow amount.

Debtor's Reply

The Trustee first opposes the Motion on grounds of a discrepancy in the stated value of the real property. In her Schedules, Debtor identifies the fair market value of the property as \$200,000 (Exhibit A - Schedule A). At the time of filing the schedules, Debtor believed this to be the fair market value of the property, and the value is based on her own opinion. In the process of listing the property for short sale, an appraisal was conducted, as well as comparable property valuations, and it was determined that the actual market value of the property was \$220,000. As shown on Amended Schedule D (Exhibit B -Amended Schedule D), the total secured liens against the property are \$357,093. This is substantially higher than the fair market value of the property, and as such neither debtor, nor her co-owner spouse, anticipate any equity proceeds from the sale of the property.

Debtor's spouse, whom she is separated from, will receive a maximum of \$10,000 in relocated assistance, as indicated in the Estimated Settlement Statement, as part of the Federal Home Affordable Foreclosure Alternatives Program (hereinafter "HAFA"), which provides relocation assistance to distressed homeowners who are forced to dispose of their home by way of either short sale or deed-in-lieu programs. As the Trustee states, Debtor is not currently living in the property subject to the short sale, and has no interest in the relocation funds. Debtor is working to obtain an amended Estimated Settlement Statement showing Mr. Fresnoza as the party eligible to receive the funds, as opposed to Debtor herself.

The Trustee lastly opposes the Motion on the grounds that the Law Offices of Ted A. Greene, Inc. (hereinafter "LOTAG") is designated on the Estimated Settlement Statement as receiving funds in the amount of \$2,200. The funds identified in the Estimated Settlement Statement are payment for negotiating the short-sale of the property, a service rendered outside of the bankruptcy services, and not included in the scope of the 2016 fees for services relating to the bankruptcy case. Work on obtaining Bankruptcy Court approval of the short-sale, a Chapter 13 Plan that supports the short-sale, and all work within the bankruptcy case is considered to be within the scope of the fees approved under Rule 2016 and properly disclosed in Debtor's Rights and Responsibilities, as referenced by the Chapter 13 Trustee.

Discussion

As Secured Creditor U.S. Bank, N.A. points out, the short sale is still under review and has not been approved. The court's decision is to continue the matter to allow Secured Creditor time to decide whether to approval the short sale.

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 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 continued to January
26, 2016 at 2:00 p.m.

Final Ruling: No appearance at the January 12, 2016 hearing 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2015. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to is continue the Motion to Confirm the Plan to January 26, 2016 at 2:00 p.m.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan appears to have been filed in bad faith, with the sole intent to delay payment to creditors. Debtor is proposing no payment to Class 1 secured creditors.
2. The plan is not the Debtor's best efforts under § 1325(b). Debtor is below median income proposing a 60 month plan paying \$55 per month with 0% to general unsecured creditors.
3. It appears Debtor is merely paying attorney fees and doing nothing to attempt to reorganize their debts. Thus, this case is a disguised Chapter 7.

Debtor's Reply

A "fee-only plan," or a plan which pays only the attorney fees and administrative expenses to the Trustee, are not per se in bad faith. *Berlinger v. Pappalardo*, 674 F.3d 80 (1st Cir. 2012).

In fact, Debtor's Plan does propose to pay a substantial portion of the Class 1 Claims of Nationstar Mortgage and Citi Mortgage, as holders of the First and Second Deeds of Trust on Debtor's real property, with proceeds of a short sale.

If Debtor is not allowed to complete her shortsale, Nationstar Mortgage, holder of the First Deed of Trust, would be required to complete foreclosure proceedings against the real property. There is a very real risk that Nationstar would either receive less than the fair market value of the residence, or be forced to resume ownership of the property, incurring additional expenses for maintenance, upkeep, and the administrative expenses of completing the foreclosure.

Discussion

The court's decision is to continue this matter to coincide with the continued hearing on the Motion to Sell. .

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 continued to January 26,
2016 at 2:00 p.m.

12. [15-28724](#)-C-13 DONETTA COLLINS
SDB-1 W. Scott de Bie
11-23-15 [\[15\]](#)

MOTION TO VALUE COLLATERAL OF
GATEWAY ONE LENDING

Final Ruling: No appearance at the January 12, 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, respondent creditor, and Office of the United States Trustee on November 23, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Gateway One Lending, "Creditor," is granted.
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2005 Mercedes ML 350. The Debtor seeks to value the property at a replacement value of \$5,055 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$7,244. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$5,055. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Gateway One Lending secured by a purchase-money loan recorded against a 2005 Mercedes ML 350 is determined to be a secured claim in the amount of \$5,055 , and the balance of the claim is a general unsecured claim. The value of the vehicle is \$5,055 .

13. [15-28231](#)-C-13 KATHY MUNO
DPC-2 Stephen Murphy
12-10-15 [[37](#)]

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS

Also #14

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2015. Twenty-eight days' notice is required. That requirement was met.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

<p>The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.</p>

The Trustee objects to the Debtor's use of the California exemptions to exempt an interest in life insurance proceeds from her husband's death in the amount of \$167,000. California Code of Civil Procedure §703.140, subd. (b)(11)(C).

Under the exemption, the debtor must be a dependent of the deceased and the funds must be reasonable and necessary for the support of the debtor to be eligible to claim the exemption.

The Trustee believes that evidence demonstrates that the life insurance proceeds are not necessary for the support of the debtor.

Schedule I reflects that Debtor has been employed by Raley's for 30 years. Schedule B reflects over \$100,000 in savings and retirement income. Schedule J reflects \$3,886.69 in monthly expenses.

Further, Debtor admitted that she does not intend to use the life insurance proceeds for her current living expenses, but plans to save the money for her future retirement.

Debtor's Opposition

Debtor's household income prior to her husband's death was \$12,702.84 per month (decedent's wages \$8,949.74 + Debtor's wages \$3,753.10). Debtor was dependent on her deceased spouse for half or more of her support. Hence, Debtor was a dependent of her deceased spouse.

Upon retirement, Debtor's UFCW-Northern California Employers Joint Pension Plan (hereinafter referred to as the "Raley's Pension") will be valued at \$1,451.79 per month. The benefit Debtor would receive upon retirement is less than the amount she earns from employment, so retiring would result in a net loss that would leave her with a substantial budget deficiency.

Debtor is not retired. She is fifty-seven years old and in good health. She has no plans to retire in the foreseeable future because her retirement savings will be insufficient to support her after retirement.

Trustee's Reply

Trustee also objects to the claim of exemption under California Code of Civil Procedure § 703.140, subd. (b)(1) and (b)(5). Debtor has now claimed 100% of fair market value, up to any applicable statutory limit on 2757 Hillview Dr., Fairfield, CA under § 703.140, subd. (b)(1); that statute allows up to \$24,060. Where Debtor has not specified the amount claimed, Trustee objects to the other claims of exemption under § 703.140, subd. (b)(5) for any amount above \$1,280; that statute allows \$1,280 plus any unused amount of § 703.140, subd. (b)(1). The Debtor has claimed a total of \$6,088 of exemptions under subdivision(b)(5).

It does not appear that the life insurance proceeds are currently reasonable and necessary. Debtor's monthly income is over \$3,000 and the monthly plan payment is \$990. Debtor will have an additional \$990 in disposable income in 5 years upon conclusion of the bankruptcy to assist in her future support.

It does not appear that the life insurance proceeds are reasonable and necessary for Debtor's future support. Debtor is likely to receive \$1,660 pension from her spouse, at least \$1,479 from her current employer (which continues to grow in value), and roughly \$1,335 in Social Security Income. Further, the Debtor may have \$80,000 from Mass Mutual Retirement Savings.

Discussion

As the Trustee highlights, the life insurance proceeds are not currently reasonable and necessary to support the debtor nor will the proceeds be necessary to support the Debtor in the future. The evidence demonstrates that Debtor has and will have sufficient income and savings to support herself currently and through retirement.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

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 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 are disallowed in their entirety.

14. [15-28231](#)-C-13 KATHY MUNO
DPC-1 Stephen Murphy
12-10-15 [33]

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. The plan fails the liquidation analysis. § 1325(a)(4). Debtor lists an interest in life insurance proceeds and exempts the assets. The Trustee contests the exemption, which will be heard on the same date as this hearing. If the exemption is disallowed, the plan may fail liquidation.
2. Debtor may have a pension plan from her employment, but not is listed.

Debtor's Opposition

Debtor mistakenly forgot to list her pension plan. Debtor has amended her schedules to include the pension income and also to claim an exemption in the full amount of the proceeds.

Trustee's Reply

Debtor asserts that her exemption in life insurance proceeds is proper as Debtor is a dependent of her husband. However, Debtor's schedules reflect substantial income thereby nullifying the assertion of dependency.

In amending her schedules to reflect her pension plan, Debtor removed an interest in Mass Mutual Retirement Saving valued at \$80,000. Debtor offers no explanation as to why this account has been deleted.

Discussion

The court has sustained the Trustee's Objection to Claim of Exemption. Therefore, the plan may fail the liquidation analysis.

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

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

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

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

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

15. [15-29032](#)-C-13 EFRAIN/LUZ SALCEDO
SDB-1 W. Scott de Bie
12-10-15 [[14](#)]

MOTION TO VALUE COLLATERAL OF
CAPITAL ONE AUTO FINANCE

Also #16

Final Ruling: No appearance at the January 12, 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, respondent creditor, and Office of the United States Trustee on December 10, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Capital One Auto Finance, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2009 Dodge Journey. The Debtor seeks to value the property at a replacement value of \$7,760 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$12,510. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,760. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Capital One Auto Finance secured by a purchase-money loan recorded against a 2009 Dodge Journey is determined to be a secured claim in the amount of \$7,760, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$7,760.

16. [15-29032](#)-C-13 EFRAIN/LUZ SALCEDO
SDB-2 W. Scott de Bie
12-10-15 [20]

MOTION TO VALUE COLLATERAL OF
BHFC FINANCIAL SERVICES, INC.

Final Ruling: No appearance at the January 12, 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, respondent creditor, and Office of the United States Trustee on December 10, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Capital One Auto Finance, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2007 Chrysler Sebring. The Debtor seeks to value the property at a replacement value of \$4,996 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition, with a balance of approximately \$10,687. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$4,996. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of BHFC Financial Services, Inc. secured by a purchase-money loan recorded against a 2007 Chrysler Sebring is determined to be a secured claim in the amount of \$4,996, and the balance of the claim is a general unsecured claim. The value of the vehicle is \$4,996.

17. [15-28235](#)-C-13 DARYL PEARSON
BF-5 W. Scott de Bie
12-8-15 [[28](#)]

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.

Also #18

Final Ruling: No appearance at the January 12, 2016 hearing is required.

Creditor Bank of America, N.A. having filed a "Withdrawal of Motion" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Objection to Confirmation.**

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.

An Objection to Confirmation having been filed by Creditor Bank of America, N.A., pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation is dismissed without prejudice.

18. [15-28235](#)-C-13 DARYL PEARSON
DPC-1 W. Scott de Bie
12-10-15 [[31](#)]

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

19. Debtor did not appear at the First Meeting of Creditors held on December 3, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

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

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

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

Minutes for the hearing.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 29, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

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 Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 15-28982) was filed on November 19, 2015 and dismissed on December 7, 2015, for Debtor's failure to file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (3) (c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal.

2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?

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

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

Discussion

Here, Debtor's stated intention for filing this case is to save her home and obtain a fresh start. Debtor's prior case was dismissed for failure to complete the balance of the schedules. Debtor waited fewer than 30 days from the dismissal of her prior case before filing the instant case.

Debtor filed the first case in order to stop a pending foreclosure but had to file a skeletal case for lack of time to prepare the entire petition, statements, and schedules. Debtor is elderly and somewhat impaired and relies heavily on her adult daughter, with whom she lives. Per Debtor's declaration, her daughter became very ill and was unable to assist in gathering the material needed to finish the required documents until after the deadline had passed. As soon as the daughter had recovered sufficiently to help, the information was gathered. The documents are being filed contemporaneously with this motion.

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. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

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

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

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

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

IT IS ORDERED that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

21. [15-28538](#)-C-13 ROSE RODRIGUEZ
BF-5 Pro SE
12-15-15 [[19](#)]

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.

Also #21

Final Ruling: No appearance at the January 12, 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, and Office of the United States Trustee on December 15, 2015. Twenty-eight days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor Bank of America, N.A. is the holder of a claim secured only by Debtor's primary residence.

Creditor Bank of America, N.A. opposes confirmation of the Plan on the basis that the plan understates the arrearage owed in violation of § 1322(b)(2).

As Creditor's concern highlights, 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 Creditor Bank of America, N.A. having
been presented to the court, and upon review
of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that Objection to

confirmation the Plan is sustained and the
proposed Chapter 13 Plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not appear at the First Meeting of Creditors held on December 10, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. Debtor has not provided Trustee with 60 days of employer

payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

4. The plan fails the liquidation analysis. § 1325(a)(4). Debtor's non-exempt assets total \$170,000, and Debtor proposes a 0% dividend to unsecured creditors.
5. Debtor's petition fails to list five previous filings.

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

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

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

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

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

23. [15-27239](#)-C-13 HUMBERTO DIAZ
BF-1 Pro SE
12-4-15 [[32](#)]

OBJECTION TO CONFIRMATION OF
PLAN BY DITECH FINANCIAL, LLC

Final Ruling: No appearance at the January 12, 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, and Office of the United States Trustee on December 4, 2015. Twenty-eight days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor Ditech Financial LLC is the holder of a claim secured only by Debtor's primary residence.

Creditor Ditech Financial LLC opposes confirmation of the Plan on the basis that the plan understates the arrearage owed in violation of § 1322(b)(2).

As Creditor's concern highlights, 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 Creditor Ditech Financial LLC 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.

24. [15-26843](#)-C-13
KMT-1

ENRICO MENDOZA
Stephen Murphy

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY A.I.
HOLDINGS, LLC
10-23-15 [[18](#)]

Also #24

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 23, 2015. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to set the matter for evidentiary hearing at the hearing.
--

A.I. Holdings, LLC ("Creditor), an unsecured creditor, opposes confirmation of the Plan on the basis that the Plan is not feasible. A.I. Holdings, LLC's claim is valued at \$93,436.66, and the proposed \$880 monthly payment will not pay off A.I. Holdings, LLC's claim and the other unsecured creditors. The Plan only includes approximately \$3,100 for A.I. Holdings, LLC's claim. In fact, A.I. Holdings, LLC's claim is \$93,436.66.

Furthermore, the Plan, which proposes to pay \$880 per month, does not satisfy the "Disposable Income" test. The debtor's monthly disposable income under section 1325(b)(2) is \$2,865.98 according to his bankruptcy petition. (Form 22C-2.)

Debtor's Response

Debtor entered into a pre-petition lease with A.I. Holdings for space located in a multi-tenant commercial building.

Debtor missed a payment for rent to A.I. Holdings because he could no longer afford to make the payments.

Debtor attempted to mitigate damages to A.I. Holdings by locating potential new tenants for the Leased Premises. On August 6, 2015, Debtor made a written request to assign or sublet the Leased Premises to potential new tenants. Exhibit 2. A.I. Holdings denied Debtor's request. In A.I. Holding's failure to approve or consider new tenants for the Leased Premises, it failed to mitigate its own damages.

Debtor listed the Lease as a pre-petition unexpired lease rejected in the bankruptcy in his bankruptcy petition(see docket #1). Debtor's Chapter 13 Plan also rejects the Lease. Please refer to section 3 of the Chapter 13 Plan (see docket #5).

Debtor filed an Objection to Proof of Claim #5 filed by A.I. Holdings, LLC. The matter is set for hearing on December 15, 2015, at 2:00 p.m. (see matter below)

Creditor's Response

Debtor Mendoza argues that the lease required monthly payments of \$3,121.85 per month beginning in November 2014 through October 2019. However, the addendum to the lease, attached to the Exhibit List as Exhibit B states that the monthly lease payments increased to \$3,246.73.1 According to the summary of the claim amount, attached to the proof of claim, and applying the increased monthly lease payment as of November 2015, capped at one year from the filing of the bankruptcy, September 2015-August 2016, the claimed for missed commercial lease payments is \$41,832.85.

A.I. Holdings attempted to mitigate its loss, but all parties interested in the space have declined to rent.

Mr. Mendoza's removal of walls and doors, and damage to the leased premises is in excess of \$42,000. The damage is pictorially documented. Mr. Mendoza objects to paying damages that were incurred due to his early termination of the lease.

Paragraph 13.2(a) of the Lease Agreement, attached as Exhibit A to the Exhibit List originally filed, provides for the recovery of reasonable attorneys' fees incurred to recover damages owed by Mr. Mendoza. A.I. Holdings paid an attorney \$150 to prepare the letter itemizing the amounts owed and the basis for no return of the deposit. The remainder of the attorneys' fees identified were associated with preparing the proof of claim, and does not cover additional fees incurred for the Objection to the Plan, which is also recoverable. (Claire Decl., ¶6.) Such fees are recoverable in a bankruptcy proceeding.

Discussion

Because the court has continued the hearing on the Objection to Claim, the hearing on this Objection to Confirmation was also continued.

The Objection to Confirmation turns on resolution of the Objection to Claim. The court is not prepared to resolve the Objection to Claim at this time. Accordingly, this matter will be continued to the date set for an evidentiary hearing for the Objection to 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 A.I. Holdings, LLC 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 continued to . . .

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 27, 2015. Twenty-eight days notice is required. That requirement was met.

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

The court's decision is to set the matter for evidentiary hearing at the hearing.

Enrico Mendoza, the Debtor, ("Objector") requests that the court disallow the claim of A.I. Holdings, LLC ("Creditor"), Proof of Claim No. 5 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$93,436.66. Objector asserts that the claim is disallowed as it is based on a rejected lease.

On July 22, 2014, Debtor entered into a pre-petition lease with A.I. Holdings for space located in a multi-tenant commercial building commonly known as 4851 Lone Tree Way, Suite A-2.

Debtor listed the Lease as a pre-petition unexpired lease rejected in the bankruptcy in his bankruptcy petition (see docket #1). Debtor's Chapter 13 Plan also rejects the Lease. Please refer to section 3 of the Chapter 13 Plan (see docket #5).

Trustee's Nonopposition

The Chapter 13 Trustee has no opposition to the Objection to Claim.

Legal Standard

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed,

the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Previously

At the hearing, the creditor appeared and stated that the "opposition" had been filed in the form of the objection to confirmation. The court noted that such did not comply with the pleading rules. However, rather than summarily sustaining the objection, and being presented with a motion for relief pursuant to Federal Rule of Civil Procedure (60)(b) and Federal Rule of Bankruptcy Procedure 9024, the court continues the hearing for further consideration.

Creditor's Opposition

After the hearing on December 15, 2015, the Creditor filed an opposition. Dkt. 46.

A.I. Holdings, LLC entered into a commercial lease for a period of 5 years, ending October 30, 2019, with monthly lease payments of \$3,121.85 until November 2015, and \$3,246.73 until November 2016, and increasing thereafter. The lease also required Debtor to pay utility costs, prorated for the space leased, of approximately \$75 per month. (Lease, attached to Proof of Claim, Debtor's Exhibit 1, pp. 4-25; Supp. to Lease, attached to Proof of Claim, Debtor's Exhibit 1, pp. 26-28.)

Debtor was offered an inducement of 3 months lease payments, totaling \$9,365.55, which was subject to repayment if the lease terminated early. (Lease, attached to Proof of Claim, Debtor's Exhibit 1, ¶¶ 1.4, 3.2, 13.3.) On August 6, 2015, Debtor terminated the lease. At that time, damages included the rent inducement, the August rent, unpaid utility costs, and the cost of repairing the leased premises, and removing abandoned property. (See Lease, attached to Proof of Claim, Debtor's Exhibit 1, ¶¶ 4, 7.4(c); 11, 13.3.) By the time that Mr. Mendoza filed for bankruptcy, he also owed interest, late charges, and attorneys' fees pursuant to the Lease. (Lease, attached to Proof of Claim, Debtor's Exhibit 1, ¶¶ 13.2(a), 13.4, 13.5.)

Future Rent Is Recoverable

As the Debtor points out, a landlord's claim for damages is determined by state law and the terms of the lease and then limited by 11 U.S.C. section 502(b)(6). Section 502(b)(6) does not limit any other damages - section 502(b)(6) only puts a cap on the rent component of the landlord's claim.

Debtor cites to *City Farmers Trust Co. v. Irving Trust Co.*, 299 U.S. 433 (1937) in support of the argument that no future rents are recoverable by a creditor landlord. However, this case does not stand for the proposition that future rent is not recoverable. Indeed, the U.S. Supreme Court held that the landlord could recover future rent in keeping with the contract and New Jersey law.

Federal bankruptcy law continues to allow the recovery of one year of lease payments after the filing of the bankruptcy. (11 U.S.C. § 502(b)(6).) This is exactly what AI Holdings included - rent from September 2015 through August 2016.

Creditor Did Not Fail to Mitigate Damages

Debtor argues that AI Holdings did not mitigate its damages by re-letting the leased premises to prospective tenants identified by Debtor. This is based on a false factual premise. The email communications with the proposed tenants make clear that the proposed tenants would not lease the premises, even under favorable lease terms. (Claire Supp. Decl., ¶ 2.) Moreover, AI Holdings has been unable to lease the space yet. (Martin Decl., ¶ 8.)

Creditor's Claim Can Include Non-Lease Damages

Debtor also argues that AI Holdings cannot claim damages that AI Holdings suffered which are not lease payments. California law permits the recovery of damages outside of future rent. See *Lu v. Grewal*, 130 Cal.App.4th 841, 850 (2005); *In re El Toro Materials Co., Inc.*, supra, 504 F.3d at 980.

Debtor Significantly Damaged the Property

Debtor claims he made minor changes to the drywall and drilled ten small holes in the floor near the wall. This flies in the face of the photographs that show that Debtor took down walls, removed doors and windows, and change the neutral paint scheme to a red and blue paint scheme. (Martin Decl., ¶¶ 2-5.) Since the estimate prepared by Williamson Ranch Office Repair, AI Holdings has incurred over \$5,000 to make the space presentable to potential tenants by re-painting the suite and removing the wall that hung a few inches from the ceiling and fixing the ceiling tiles. (Claire Supp. Decl., ¶ 4.)

Discussion

11 U.S.C § 502(b) (6) Calculation

Section 502(b) states that, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim ... and shall allow such claim in such amount, except to the extent that—

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease

11 U.S.C. § 502(b) (6).

Here, Creditor may collect one year of rent as that is greater than 15% of the remaining term of the lease.

What Is Included in "Rent"

Section 502(b) (6) limits the landlord's claim for damages, which is determined by state law, *In re Iron-Oak Supply Corp.*, 169 B.R. 414, 417

(Bankr.E.D.Cal.1994) (citing *Butner v. United States*, 440 U.S. 48, 54-55, 99 S.Ct. 914, (1979)), as well as by the terms of the lease or contract between the parties. *In re Financial News Network, Inc.*, 149 B.R. 348, 350 (Bankr.S.D.N.Y.1993).

"Rent" does not simply include base rent, but can include other amounts payable, such as taxes, maintenance charges, legal fees and costs, and other obligations of the tenant to the landlord as set forth in the lease.

Mitigation of Damages

Lessors have a duty to mitigate damage that they incur as a result of a

debtor's rejection of a lease, and the benefits of mitigation reduce the lessor's damage calculation. Here, whether the lessor mitigated damages by finding a new tenant is in dispute. This is a factual issue that requires an evidentiary hearing.

A security deposit must be applied to reduce the § 502(b)(6) cap. The pre-petition rent payment of \$3,121.85 for August 2015 is offset by Debtor's security deposit of \$3,121.85.

What Is Collectable Exclusive of the § 502(b)(6) Statutory Cap

Liability for property damage unrelated to termination of the lease is not subject to the statutory cap.

The Ninth Circuit has held that a landlord's recovery against debtor/tenant for waste, nuisance, and trespass arising from its failure to remove mining debris and equipment from leased property was not limited by 11 U.S.C § 502(b)(6) statutory cap on damages for lost rental income. *In re El Toro Materials Co., Inc.*, 504 F.3d 978 (9th Cir. 2007).

Here, Creditor claims that Debtor significantly damaged the property before terminating the lease. Such damage is exempt from the statutory cap and fully recoverable. The extent and amount of damage is a factual issue which requires an evidentiary hearing.

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

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

The Objection to Claim of A.I. Holdings, LLC, Creditor filed in this case by Enrico Mendoza, 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 hearing on the objection to Proof of Claim Number 5 of A.I. Holdings, LLC is continued to
....

Final Ruling: No appearance at the January 12, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 23, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on September 12,
2013 is confirmed, and counsel for the Debtors
shall prepare an appropriate order confirming the
Chapter 13 Plan, transmit the proposed order to the
Chapter 13 Trustee for approval as to form, and if
so approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Thru #28

Final Ruling: No appearance at the January 12, 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 the Creditor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2015. Twenty-eight days notice is required. That requirement was met.

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

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

Ocwen Loan Servicing, LLC, as servicer for US Bank National Association, Trustee, opposes confirmation of the Plan on the basis that the plan understates the arrearage owed to creditor holding a claim secured by the first deed of trust on debtor's primary residence.

It is anticipated that secured creditor's claim will show the pre-petition arrearage due secured creditor is \$20,195.06, whereas the Plan proposes to pay only \$18,000.00. Therefore, the Plan is not in compliance with the requirements of 11 U.S.C. §§ 1322(b)(3) and 1325(a)(5) and cannot be confirmed.

Discussion

Pursuant to 11 U.S.C. §§ 1322(b)(2), a chapter 13 plan may not modify the rights of a creditor as to its claim secured only by a security interest in the debtor's principal residence. The plan's understatement of the arrearage owed on a mortgage debt secured by debtor's primary residence violates said anti-modification provision.

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 Ocwen Loan Servicing, LLC 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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Real Time Resolutions, Inc./Deutsche Bank National Trust Company, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9052 Halkirk Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$275,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$354,488.00. The second deed of trust held by Real Time Resolution, Inc./Deutsche Bank National Trust Company, GSAA Trust 2007-S1 secures a loan with a balance of approximately \$62,191.24. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the

amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Real Time Resolution, Inc./Deutsche Bank National Trust Company, GSAA Trust 2007-S1 secured by a second deed of trust recorded against the real property commonly known as 9052 Halkirk Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$275,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Thru #31

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2015. 14 days' notice is required. This requirement was met.

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

The Motion to Extend the Automatic Stay is granted.
--

Jason Ralph Belotti and Shelly Renee Belotti ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-21781) was dismissed on December 2, 2015, after Debtor failed to cure a default, file written objection, file a motion to modify plan, and perform under the terms of the proposed modified plan. See Order, Bankr. E.D. Cal. No. 15-21781, Dckt. 80, December 2, 2015. 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.

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, 209-210 (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 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor states that they suffered some substantial and unanticipated setbacks during the course of their prior chapter 13 case, causing them to be unable to comply with their confirmed plan. Debtor Jason Belotti states that in August 2015, he lost his job and could not maintain plan payments. In September 2015, Debtor obtained temporary employment. In October and November, Debtor obtained permanent employment.

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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2015. Fourteen days' notice is required. That requirement was met.

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

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

The Motion filed by Jason Ralph Belotti and Shelly Renee Belotti ("Debtor") to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Hyundai Elantra ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7,331 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 1, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,875. 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 \$7,331. 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 Jason Ralph Belotti and Shelly Renee Belotti ("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 Travis Credit Union ("Creditor") secured by an asset described as 2008 Hyundai Elantra ("Vehicle") is determined to be a secured claim in the amount of \$7,331, 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 \$7,331 and is encumbered by liens securing claims which exceed the value of the asset.

31. [15-29647](#)-C-13
RDS-3

JASON/SHELLY BELOTTI
Richard Steffan

MOTION TO VALUE COLLATERAL OF
RC WILLEY HOME FURNISHINGS,
INC.
12-23-15 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of RC Willey Home Furnishings, Inc., "Creditor," is granted.

The Motion filed by Jason Ralph Belotti and Shelly Renee Belotti ("Debtor") to value the secured claim of RC Willey Home Furnishings, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a home furnishings, including a couch, dining table, and two table ends ("Furnishings"). The Debtor seeks to value the Furnishings at a replacement value of \$1,875.00 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 owes a secured debt to Creditor with a balance of approximately \$2,339.70. 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 \$1,875.00. 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 Jason Ralph Belotti and Shelly Renee Belotti ("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 RC Willey Hoome Furnishings, Inc. ("Creditor") secured by an asset described as home furnishings, including a couch, dining table, and two table ends ("Furnishings") is determined to be a secured claim in the amount of \$1,875.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Furnishings is \$1,875.00 and is encumbered by liens securing claims which exceed the value of the asset.

Final Ruling: No appearance at the January 12, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 5, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor did not appear at the first meeting of creditors on December 10, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtor has not provided Trustee with 60 days of employer payment advices prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

4. Debtor's plan does not propose any plan payments. Section 2.01 states "Request a conservator be appointed to run the trailer park and take proceeds to pay all costs of the park and debt." This treatment is not proper in a chapter 13 plan under 11 U.S.C. § 1325. Trustee points out that the court granted Creditor Larry R. Williamson relief from the stay as to 12468 La Porte Road, Clipper Mills, California. This appears to be the property for which Debtor requests a conservator.
5. Debtor's plan does not pay unsecured creditors what they would receive in the even to of a chapter 7. Debtor's non-exempt assets total \$479,179.70 and Debtor proposes to pay 0% to unsecured creditors.
6. Debtor has not provided a chapter 13 statement of current monthly income. A review of the court record indicates that Debtor has only filed a chapter 7 statement of currently monthly income.
7. Debtor does not appear to be able to make payments required under 11 U.S.C. § 1325(a)(6). Debtor's schedule J shows negative net income on line 23c.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee, David Cusick, opposes the instant motion to confirm plan on the basis that:

1. Debtor has not shown that he is able to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6).
 - a. Trustee is not certain if Debtor is making sufficient income to be able to pay \$3,360.00 per month. Schedule I reflects \$4,555.00 from rental properties. Debtor admitted at the first meeting that the monthly rental income is sporadic and that the rental income received as cash deposits into his bank accounts. Trustee received copies of Debtor's bank statements for Patelco Credit Union for the months of June and July 2015, which do not reflect any cash deposits for those month.
 - b. Debtor admitted at the first meeting that the properties located at 186 Del Sur Court and 1910 Grande Circle #119 are not insured which is a violation of the chapter 13 plan. Section 5.02 of the plan, Debtor's duties enumerates a multitude of duties imposed on the Debtor, one of which is maintaining insurance.
2. Debtor is delinquent \$7,240 in plan payments under the terms of the

amended plan filed November 4, 2015.

3. Debtor has failed to amend schedules I and J. Debtor's Motion to Sell Real Property located at 186 Del Sur Court has been granted by the court-Debtor will no longer receive \$1,000 per month in rental income from that property.
4. Debtor cannot make the payments called for under the plan or comply with the plan, 11 U.S.C. § 1325(a)(4). Debtor's plan relies on a loan modification, however Trustee is not aware of any loan modification in progress.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor did not appear at the first meeting of creditors on December 10, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor cannot make payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of One Main Financial on a 2004 Chevy Impala, but has failed to file a Motion to Value Collateral to date.

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

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

holding that:

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

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

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

Final Ruling: No appearance at the January 12, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

Final Ruling: No appearance at the January 12, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 12, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Also #39

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 22, 2015. Fourteen days' notice is required. That requirement was met.

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

<p>The court's decision is to sustain the Objection.</p>

PREVIOUSLY

The instant objection was originally set for hearing on November 17, 2015. The court continued the hearing to January 12, 2016 at 2:00 p.m. to allow for resolution of the motion to value, upon which the Plan relies.

OBJECTION

The First US Community Credit Union ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Plan relies on the motion to value the collateral of First US Community Credit Union, which is set for hearing on October 20, 2015.

In addition, Creditor joins the Chapter 13 Trustee's Objection (see

matter below).

DEBTOR'S OPPOSITION

Debtor asserts that the motion to value will not be resolved until after an evidentiary hearing to be held on November 30, 2015. After that hearing it may take some time for an order to be issued and the terms of any confirmable plan may be drastically changed by that hearing. Therefore the debtor proposes that the court continue this objection until after the first of the year 2016.

DISCUSSION

The court notes that on November 30, 2015, Dckt. 106, the court granted Debtor's Motion to Value the Collateral of First US Community Credit Union, rendering Trustee's objection moot on that point. However, despite resolving one basis for Trustee's opposition, the court is not satisfied that Debtor has sufficiently or correctly provided treatment of general unsecured creditors or the appropriate secured creditor. The court is not satisfied that simply adding language to the order confirming plan will render this plan confirmable. The objections are sustained.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is sustained and the plan is not confirmed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 22, 2015. Fourteen days' notice is required. That requirement was met.

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

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

PREVIOUSLY

The instant objection was originally set for hearing on November 17, 2015. The court continued the hearing to January 12, 2016 at 2:00 p.m. to allow for resolution of the motion to value, upon which the Plan relies.

OPPOSITION

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

1. The Plan relies on the motion to value the collateral of First US Community Credit Union, which is set for hearing on October 20,

2015.

2. The Plan fails to provide for the secured debt of Central Mortgage Company.
3. Debtor is over the median income and proposes plan payments of \$200 for 60 months with a 1% dividend to unsecured creditors. FormB22C reflects monthly disposable income of \$1,281.22 for 60 months.
4. The Plan fails liquidation. Non-exempt assets total \$5,577. Debtor is proposing a 1% dividend to unsecured creditors, which totals \$867.76.

Debtor's Opposition

1. Debtor asserts that the motion to value will not be resolved until after an evidentiary hearing to be held on November 30, 2015. After that hearing it may take some time for an order to be issued and the terms of any confirmable plan may be drastically changed by that hearing. Therefore the debtor proposes that the court continue this objection until after the first of the year 2016.
2. Debtor asserts that the budget shows this debt as being paid for directly by the debtor and that the debt should have been rightly classified as Class 4.
3. This could be fixed in an order confirming. However, this should be continued to be resolved after the hearing on the motion to value.
4. Debtor asserts that there are a number of allowable expenses that were not claimed on the Form B22. This was an error but one that can be remedied and would lower these amounts.
5. Debtor asserts that no cost of sale or cost of Chapter 7 trustee administrative expenses has been taken into account. This would likely remove all value to unsecured creditors. However, if a distribution increase was necessary it could be adopted in an order confirming.

Discussion

The court notes that on November 30, 2015, Dckt. 106, the court granted Debtor's Motion to Value the Collateral of First US Community Credit Union, rendering Trustee's objection moot on that point. However, despite resolving one basis for Trustee's opposition, the court is not satisfied that Debtor has sufficiently or correctly provided treatment of general unsecured creditors or the appropriate secured creditor. The court is not satisfied that simply adding language to the order confirming plan will render this plan confirmable. The objections are sustained.

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

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

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

counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the plan is not confirmed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 10, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

PREVIOUSLY

This matter was originally set for hearing on December 15, 2015. The court continued the motion to allow Debtors to permit Debtors time to gather necessary documents to supplement the motion to modify.

MOTION

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

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

1. Debtors are \$6,630 delinquent in plan payments to the Trustee to date. The plan cannot be confirmed as Debtors do not appear able to make plan payments, 11 U.S.C. § 1325(a)(6).
2. There are certain discrepancies in the budget. Debtors' prior

schedule J budgeted \$75.00 per month for homeowner's insurance and \$464 per month for property taxes, even though Debtors indicated taxes were included in the mortgage payment. Debtor's supplemental schedules no longer include such taxes and insurance. Moreover, Nationstar filed a secured claim for \$575,208.39 with \$55,423.08 in arrears. The Mortgage proof of claim attachment indicates the mortgage arrears included an escrow shortage of \$21,438.94, and Debtor's mortgage payment including escrow effective February 1, 2013 was \$4,282.63. An escrow analysis was also attached to the proof of claim reflecting a pre-bankruptcy escrow balance of - \$19,517.57, a monthly principal and interest payment of \$3,768.46, a monthly base escrow of \$514.17, for a total monthly mortgage of \$4,282.63 effective February 1, 2013. Where Debtors' original budget includes taxes and insurance and now does not, and where creditor's proof of claim included an escrow deficiency in the mortgage arrears and projected continuing escrow payments, Trustee is uncertain who is paying the taxes and insurance on Debtors' property or if the mortgage payment to be paid under the confirmed plan is an amount sufficient to cover the mortgage and escrow.

3. Debtors' supplemental J budgets \$100 per month for a retirement fund loan repayment. Debtors' prior schedule J did not include this expense. Trustee is unable to locate where Debtors received court permission to borrow funds from their retirement account. Trustee has filed 6 notices of default and two motions to dismiss based on delinquency throughout the life of the plan.
4. Debtors have not adequately explained the changes in their income and expenses. Debtors' prior schedule I provided a breakdown of withholding expenses where the current schedule does not. Trustee cannot determine what Debtor has lumped into the increased withholding amounts. Debtors' expenses for a family of four appear unreasonably low. Food decreases from \$450 to \$350, clothing from \$80 to \$20, medical from \$100 to \$10, and transportation from \$440 to \$330. Where Debtors propose to increase plan payments from \$5,606 to \$6,630, and provide supplemental schedules reflecting a reduction in net monthly income, Debtor should provide an explanation as to changes made in expenses and how Debtor plans to maintain the plan payments proposed when they have been unable to maintain smaller payments in the past.

DEBTORS' RESPONSE

Debtors respond to Trustee's concerns, first, providing that they have paid their November plan payment of \$6,630 and are current under the terms of the proposed modified plan. Second, to address the issues identified by Trustee's opposition, Debtors state they will meet with counsel and submit appropriate documents supplementing the instant motion. Debtors request a continuance in order to fully address Trustee's concerns.

TRUSTEE'S SUPPLEMENTAL OPPOSITION

On January 4, 2016, Chapter 13 Trustee submitted a supplemental opposition, stating that to date, Debtors had not provided to Trustee or filed with the court any additional documentation to address the standing objections regarding the motion to modify.

In addition to Trustee's previously voiced objections, Trustee adds

that Trustee requested Debtor's 2013 and 2014 tax returns on November 25, 2015, which were received on December 11, 2015 after the Trustee's original opposition was filed. While the tax returns do not resolve any of the Trustee's previous objections, a review of the tax returns and Debtors' supplemental schedule I reflects that Debtors may be over-withholding.

Debtors' 2014 tax returns reflects a gross income of \$150,913.00 with \$9,506.00 in federal taxes, \$3,074.00 in state taxes, or a \$12,580.00 combined tax liability. Debtors' supplemental schedule I filed November 10, 2015, Dckt. 91, reflects Debtors' current annual gross income is \$153,719.64 with combined monthly tax, medicare and social security deductions of \$2,886.75. Less 7.5% for medicare and social security, Debtors' current monthly tax liability is \$1,926.00 for \$23,112.00 per year. This amount as compared to Debtors' 2014 tax return where the total tax liability was \$12,580.00, it would appear Debtors may be over-withholding.

DEBTORS' SUPPLEMENTAL DECLARATION

Debtor Henry P. Kanae submitted a supplemental declaration in response to Trustee's supplemental opposition on January 5, 2016. The declaration provides that:

1. The monthly property taxes and insurance are being paid by the mortgage company as part of the payment paid by Trustee.
2. Debtors obtained the retirement loan in 2013 and began paying it back 6 months later.
3. Debtors are able to reduce their expenses because Debtors' daughter is staying at her school until graduation, greatly reducing their expenses.
4. Debtors' taxes are all normal deductions absent the "pre-tax payment for appliances purchased through the state program."
5. Last year, Debtors' stove, dishwasher, and refrigerator all went out, and through the state program, Debtors got a good price to replace them, and the state gave Debtors 18 months to repay.
6. The monthly payment is \$245 and is finished July 2016, and Debtors acknowledge that they will have an additional \$245 to add to their plan payment.

DISCUSSION

The court granted Debtors an additional month requested by Debtors in order to adequately supplemental their response to address Trustee's concerns. Debtors have failed to do so. The court shares Trustee's concerns, and is not convinced at this time that Debtors will be able to maintain plan payments, given the unexplained reduction in expenses and their inability to maintain plan payments of a lesser amount in the past.

In their supplemental declaration, consisting on less than one page of explanation, submitted only after Trustee points out that Debtors have not submitted the supplemental documentation, Debtors do not adequately explain: (1) where Debtors' original budget includes taxes and insurance and now does not, and where creditor's proof of claim included an escrow deficiency in the mortgage arrears and projected continuing escrow payments, who is paying the taxes and insurance on Debtors' property or if the mortgage payment to be paid under the confirmed plan is an amount sufficient to over the mortgage and escrow; (2) state that they received the retirement loan which they are currently paying back in 2013-however Debtors filed the instant bankruptcy case in January 2013, and do not assert that they received court

permission to obtain the retirement loan; (3) the newly raised concern that Trustee has raised about the apparent over-withholding of taxes.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan denied, and the plan is not confirmed.

Final Ruling: No appearance at the January 12, 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, respondent creditor, and Office of the United States Trustee on December 7, 2015. Twenty-eight days' notice is required. This requirement was met.

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

<p>The Motion to Value secured claim of Wheels Financial Group/DBA Loan Mart ("Creditor") is denied.</p>

The Motion filed by Thomas Edward Boyes and Becky Ann Boyes ("Debtor") to value the secured claim of Wheels Financial Group/DBA Loan Mark ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 1999 Chevrolet Suburban 1500 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,541 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan owed to Creditor with a balance of approximately \$5,470. Debtors request that the court determine that the value of the secured claim be \$2,541 and that the remainder declared unsecured.

However, nowhere in Debtors' moving papers or declaration do Debtors state on what date the loan was incurred. In order to successfully value the collateral of Creditor, the loan must have been incurred more than 910 days prior to filing of the petition pursuant to the hanging paragraph, 11 U.S.C. § 1325. A look at Debtors' schedule D indicates that this loan was possibly incurred on November 1, 2013, which is in fact less than 910 days prior to the filing of the petition. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is not 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 Thomas Edward Boyes and Becky Ann Boyes ("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 denied.

Final Ruling: No appearance at the January 12, 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, respondent creditor, and Office of the United States Trustee on November 25, 2015. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of EOS, CCA, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 870 Merrill Drive, Dixon, California. The Debtor seeks to value the property at a fair market value of \$319,470.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$378,083.00. EOS, CCA's second deed of trust secures a loan with a balance of approximately \$15,985.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by

Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of EOS, CCA secured by a second deed of trust recorded against the real property commonly known as 870 Merrill Drive, Dixon, 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 \$319,470.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the January 12, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

The 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 November 20, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

44. [14-27476](#)-C-13
CA-4

EDUARDO/MARIE ORTEGA
Michael Croddy

CONTINUED MOTION FOR
COMPENSATION FOR MICHAEL D.
CRODDY, DEBTORS' ATTORNEY
11-3-15 [[219](#)]

DEBTOR DISMISSED:
09/24/2015
JOINT DEBTOR DISMISSED:
09/24/2015

Also #45

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(6), 21 day notice requirement.)

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

The hearing on the Motion for Allowance of Professional Fees is continued to January 26, 2015 at 2:00 p.m.

Michael Croddy, the Attorney for Debtors, ("Applicant") for Eduardo and Marie Ortega, ("Clients"), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 2014 through present. Applicant requests the amount of \$18,225 in additional fees and \$973.04 in costs. Counsel has previously received a \$1,750 retainer and \$310 for the filing fee, and here requests \$17,138.04 in additional

compensation.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

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

Id. at 959.

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

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant received a retainer in the amount of \$1,750 at the outset of the case.

This motion seeks in additional fees \$17,138.04 for services related to: meeting with clients (4.90 hours); data acquisition and input (10.30 hours); 341 meeting of creditors (1.90 hours); motion to dismiss (18.20 hours); motion to confirm first amended chapter 13 plan (4.10 hours); motion to confirm second amended plan (7.30 hours); and motion for attorneys fees (0 hours).

The hourly rate here charged for services of the senior attorney is \$375. The total number of hours expended in this case for which the applicant seeks compensation is 48.6 hours.

CHAPTER 13 TRUSTEE RESPONSE

Chapter 13 Trustee, David Cusick, responds to this motion stating Trustee has a balance on hand of \$15,000. Debtors have paid in a total of \$47,984.48 and \$32,984.48 of those funds were previously disbursed to secured claims and Trustee fees under the confirmed plan. On or about October 29, 2015, Trustee received a Notice of Levy from Creditor Robert Guerra requesting the funds held by the Trustee.

PREVIOUSLY

The court originally heard this motion on November 24, 2015. The court noted that this bankruptcy case was dismissed on September 24, 2015. Order, Dckt. 215. On October 29, 2015, the Trustee reports that Creditor Robert Guerra served a notice of levy on the Trustee, seeking to recover the Debtor's interests in the monies. The Notice of Levy states that the property levied upon

At the hearing the parties addressed additional issues of whether the dismissal of the case precluded the court from ordering allowed fees to be paid

from the monies held by the Trustee; whether Creditor's lien has attached to the proceeds, whether 11 U.S.C. § 349(c) would "revest" post-petition earnings of the Debtor in the Debtor, whether 11 U.S.C. § 1326(a)(2) was applicable to post-petition earnings of the Debtor held by the Trustee for claims allowed pursuant to 11 U.S.C. § 503(b), and whether federal law pursuant to 11 U.S.C. § 1326(a)(2) preempts state judgment lien law.

The court established a briefing schedule.

APPLICANT'S SUPPLEMENTAL BRIEF

On December 11, 2015, Applicant submitted a supplemental brief addressing the grounds upon which it is asserted that the monies held by Trustee may be used to pay attorneys' fees allowed applicant in priority to the lien rights asserted by Creditor.

Applicant asserts that the issue of creditor's judgment lien vs. counsel's administrative claim is misplaced, as it presumes that no administrative claim to the monies was made prior to the case being dismissed—an Ortega Request. On September 24, 2015, the case was dismissed. Prior to dismissal, on September 22, 2015, Debtor's counsel present orally and on the record an informal claim for administrative expenses, "in the neighborhood of about \$15,000." Exhibit A, Dckt. 239. At that hearing, parties discussed how to fashion such a remedy by having the Trustee hold on to the monies. *Id.* Applicant points out that there appears no disagreement as to the actual amount of the fees requested.

Applicant raises two lines of cases supporting opposite positions. The first support the proposition that in the event of the dismissal of a case, the monies are returned directly to Debtor regardless of Creditor's lien.

The second supports the proposition that the lien creditor is paid the net return to the Debtor after deducting the administrative claim. In re Tran, 309 B.R. 330, 337 (9th Cir. BAP 2004). This line of cases, however, Creditor asserts is distinguishable from the instant case. First, Applicant asserts BAP cases are not binding upon this court. Second, Creditor asserts that this case involves an Ortega request.

Applicant asserts that here where the subject is an Ortega Request, or an "informal claim" made to the court before dismissal, the court should give priority to an applicant over a judgment creditor.

CREDITOR'S SUPPLEMENTAL RESPONSE

Creditor Robert Guerra responds to Applicant's supplemental brief. Creditor asserts that Applicant fails to substantively address the issues discussed by the court on November 24, 2015, and willfully ignores controlling U.S. Supreme Court (Harris v. Viegelaahn, 135 S.Ct. 1829 (2015)) and Ninth Circuit (In re Tran, 309 B.R. 330, 337 (9th Cir. BAP 2004), *aff'd* 177 Fed. Appx. 754 (9th Cir. 2006) authority, and that post-petition wages held by Trustee must be ordered paid to Creditor because such funds would otherwise have to be released to Debtor as a matter of law, but Creditor has properly levied such funds pursuant to his judgment under California law under FRCP 69.

Creditor disparages Applicant's reliance upon "East Coast cases," stating that they are in direct contradiction to Ninth Circuit law, which directs that where a chapter 13 case has been dismissed post-confirmation, funds held by the chapter 13 trustee must be paid to the debtor and are not to be paid to administrative claimants. Creditor asserts that Applicant's insistence that the

oral request made at the November 24, 2015 hearing is nonsensical, and should not render applicable case law irrelevant.

TRUSTEE'S SUPPLEMENTAL BRIEF

Chapter 13 Trustee David P. Cusick filed a supplemental brief regarding the instant motion for compensation. Trustee asserts that Harris v. Viegelahn, 135 S. Ct. 1829 (2015), is controlling in a case of conversion a chapter 7. The instant case involves dismissal of a case, not conversion. As such, the implicated bankruptcy code provision is 11 U.S.C. § 349 (Effect of dismissal), providing that the effect of dismissal is to "revest the property of the estate in the entity in which the property was vested immediately before the commencement of the case," not 11 U.S.C. § 348 (Effect of conversion) is applicable.

Trustee further provides that Ninth Circuit authority permits that a debtor's refund may be levied upon, at least by the IRS. In re Beam, 192 F.3d 941 (9th Cir. 1999); see also In re Harris, 258 B.R. 912 (Bankr. ID. 2000) (creditor can assert a state law levy).

Trustee points out the applicability of 11 U.S.C. § 1326 is here strained; 11 U.S.C. § 1326 provides that if a plan is confirmed, "the trustee shall distribute any such payment in accordance with the plan as soon as it is practicable." If a plan is not confirmed, "the trustee shall return any such payments not previously paid and not yet due and owing to any creditors . . . to the debtor," However here, the plan was confirmed and thus 11 U.S.C. § 1326 may not apply unless ordered pursuant to 11 U.S.C. § 349, or if the Order Confirming is vacated.

However, the Order Confirming has not been vacated, and 11 U.S.C. § 349 does not specifically vacate the order confirming. Ninth Circuit law suggests that a debtor is not bound by a confirmed plan after dismissal, and that the order confirming is no longer in force and the dismissal effectively vacates the order confirming. In re Nash, 765 F.2d 1410 (9th Cir. 1985). Case law further suggests that it is possible that cause may justify that the court may order that funds be distributed to other than to debtor. In re Tran, 309 B.R. 330 (9th Cir. BAP 2004).

Trustee does not believe that the Order Confirming was vacated, and argues that 11 U.S.C. § 349 is the controlling statute for distribution. As such, the court may for cause change where the property of the estate reverts, effectively allowing the court to issue orders directing where funds held by Trustee are distributed.

DISCUSSION

The court continue the instant matter to be resolved at hearing on January 26, 2015 at 2:00 p.m.

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 Michael Croddy ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, the asserted lien rights

interposed by Robert Guerra ("Creditor"), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Compensation is continued to January 26, 2015 at 2:00 p.m.

45. [14-27476](#)-C-13
CA-4

EDUARDO/MARIE ORTEGA
Michael Croddy

MOTION THAT THE MONIES HELD BY
THE TRUSTEE CAN BE USED TO PAY
ATTORNEY'S FEES ALLOWED
APPLICANT IN PRIORITY TO THE
LIEN RIGHTS ASSERTED BY
CREDITOR
12-11-15 [[236](#)]

DEBTOR DISMISSED:

09/24/2015

JOINT DEBTOR DISMISSED:

09/24/2015

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to hear this motion in conjunction with #44 on the calendar, Motion for Allowance of Professional Fees.
--

The court will hear this motion in conjunction with the Continued Motion for Allowance of Fees, #44, as this briefed issue was ordered as a supplemental brief, Dckt. 234, and was incorrectly separately calendared.

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 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 instant Motion shall be heard in conjunction with #44 Continued Motion for Allowance of Professional Fees, as a supplemental brief to the continued matter.

46. [15-28376](#)-C-13
DPC-1

KA KHA
Marc Caraska

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-16-15 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2015. Fourteen days' notice is required. This requirement was met.

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

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan does not provide for all priority debts as required by 11 U.S.C. § 1322(a)(2). The IRS has filed a proof of claim, Proof of Claim #2, and an Amended Claim. The most recent claim lists priority unsecured debt of \$12,400.63. The debtor is not provided for in Debtor's plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 5, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee opposes confirmation of the plan and the instant motion on the basis that the plan lists Springleaf Financial in Class 2A and is proposing to pay the contract interest rate of 22.61% toward a 55" Samsung TV. Where the Debtor is proposing to pay the creditor an interest in excess of that required under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). The expense for a higher interest rate to this creditor is not required.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied

and the proposed Chapter 13 Plan is not confirmed.

Also #49

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Chapter 13 Trustee objects to the instant motion on the basis that Debtor cannot afford to make plan payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a Motion to Value the collateral of First Investors Servicing Corporation which is set for hearing on January 12, 2016. If the motion is not granted, Debtors' plan will not have sufficient monies to pay for the claim in full and should be denied confirmation.

DEBTORS' RESPONSE

Debtors reply stating that they have filed, set, and served the appropriate motion to value the 2008 Jeep Patriot, set for hearing concurrently with the instant motion.

DISCUSSION

The court has granted Debtors' Motion to Value Collateral of First Investors Servicing Corporation. The Trustee's only basis for objection having been resolved, the court will grant the Motion to Confirm Plan.

The 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 November 25, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 12, 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 25, 2015. 28 days' notice is required. This requirement was met.

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

The Motion to Value secured claim of First Investors Servicing Corporation ("Creditor") is granted and the secured claim is determined to have a value of \$4,000.00.

The Motion filed by Mark D. Thibodeau and Annette D. Thibodeau ("Debtor") to value the secured claim of First Investors Servicing Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Jeep Patriot ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in May 9, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,149.79. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$4,000. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Mark D. Thibodeau and Annette D. Thibodeau ("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 First Investors Servicing Corporation ("Creditor") secured by an asset described as 2008 Jeep Patriot ("Vehicle") is determined to be a secured claim in the amount of \$4,000, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$4,000 and is encumbered by liens securing claims which exceed the value of the asset.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 9, 2015. Fourteen days' notice is required. This requirement was met.

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

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

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

1. Debtor is \$3,800 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,800 is due December 25, 2015. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtor did not appear at the first meeting of creditors on December 3, 2015. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

51. [12-38989](#)-C-13 MARTIN/GREGORIA LOMELI MOTION TO MODIFY PLAN
TOG-14 Thomas Gillis 11-13-15 [[138](#)]

Final Ruling: No appearance at the January 12, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 13, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

52. [15-28190](#)-C-13 TROY OCONNOR AMENDED OBJECTION TO

12-18-15 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 18, 2015. Fourteen days' notice is required. This requirement was met.

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

-----.

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

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

1. Debtor is \$350 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$350 is due December 25, 2015. Debtor has paid \$0 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. According to Trustee's calculations, the plan will complete in 165 exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

Final Ruling: No appearance at the January 12, 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2015. 28 days' notice is required. This requirement was met.

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

The Motion to Substitute is granted.

Successor-In-Interest and surviving daughter, Elizabeth Apodaca, seeks an order approving the motion to substitute the surviving daughter for the deceased Debtor, Henry Apodaca. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on November 20, 2012. On February 11, 2014, Debtor Henry Apodaca passed away. The Successor-In-Interest asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Movant requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on December 8, 2015. Dckt. 114, Exhibit 1. Movant is the Surviving Daughter of the deceased party and is the successor's heir and lawful representative. Movant states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or

incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a

party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

See also, Hawkins v. Eads, supra. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Elizabeth Apodaca has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Movant, Elizabeth Apodaca, as the daughter of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Henry Apodaca. The court grants the Motion to Substitute Party.

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 Substitute After Death 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 granted and Elizabeth Apodaca is substituted as the successor-in-interest to Henry Apodaca and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

Final Ruling: No appearance at the January 12, 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, creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2015. 28 days' notice is required. This requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Ditech Financial f/k/a Green Tree Servicing LLC ("Creditor") seeks court approval for Debtor Ador Corpus Calica ("Debtor") to incur post-petition credit. Creditor has agreed to a loan modification which will reduce Debtor's mortgage payment to \$439.85 a month. The modification will provide for an interest rate of 7.475%, and the new date of maturity will be October 1, 2037.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion 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 the Loan Modification filed by Ditech Financial f/k/a Green Tree Servicing LLC 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 Ador Corpus Calica ("Debtor") to amend the terms of the loan with Ditech Financial f/k/a Green Tree Servicing LLC, which is secured by the real property commonly known as 2721 Cascade Circle, Fairfield, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 27.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 29, 2015. 14 days' notice is required. This requirement was met.

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

The Motion to Extend the Automatic Stay is granted.
--

Candida Macayan Fuchs ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-20934) was dismissed on November 6, 2015, after Debtor failed to make plan payments. See Order, Bankr. E.D. Cal. No. 14-20934, Dckt. 28, November 6, 2015. 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.

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, 209-210 (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 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor states that she was unable to make plan payments in her previously dismissed chapter 13 case because she lost full time employment in April 2015. Debtor states that she has found a permanent part time job and another person is helping her to fulfill her payments each month. She has not acquired any new debt since her previous case, and Debtor asserts her good faith.

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.

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(3).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 6, 2015. While generally at least fourteen days' notice is required, for good cause, the court granted an order shortening time, requiring fewer than fourteen days' notice. Here, Debtor has provided 12 days' notice. Movant has submitted, and the court has granted, an order to shorten time on this matter.

The Motion to Sell Property was 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. At the hearing -----
-----.

The Motion to Extend Automatic Stay is granted.

Patricia Pennunuri ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-27646) was dismissed on December 10, 2015, after Debtor dismissed the previous case because Debtor failed to file a Motion to Value Collateral (for Debtor's vehicle), missing the 910 day requirement. 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.

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, 209-210 (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 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Specifically, Debtor's counsel miscalculated the 910 days required to value Debtor's vehicle as collateral by approximately 60 days. Debtor dismissed the previous case to allow the current case to be filed and prosecuted. The motion to value collateral has been filed in this case and is set for hearing on February 23, 2016.

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.
