

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

February 9, 2016 at 2:00 P.M.

---

1. [15-29405](#)-C-13 RHONDA SIMS MOTION TO VALUE COLLATERAL OF  
AFL-1 Ashley Amerio MOAD, LLC  
1-11-16 [[17](#)]

\*\*\*\*\*

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 11, 2016 Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Value secured claim of MOAD, LLC, "Creditor," is continued to .....</b>
--

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3073 Suisan Bay Road, West Sacramento, California. The Debtors seeks to value the property at a fair market value of \$356,589 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368

F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$370,644. MOAD, LLC's second deed of trust secures a loan with a balance of approximately \$140,334. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

### **Creditor's Objection**

MOAD, LLC, Creditor, objects to Debtor's Motion to Value, estimating the value of the subject property is greater than estimated and that the amount owed to the senior lien holder is less than estimated. Creditor has retained a licensed appraiser to value the property, but to date, Creditor has not been able to obtain access to the property from debtor. Creditor has ordered an updated payoff from the senior lienholder and upon receipt will be in a better position to evaluate and respond to Debtor's motion.

### **Discussion**

At the hearing on the Motion, the court will inquire as to the logistics of Creditor's appraisal accessing the subject property. The court's decision is to continue the hearing to allow time for appraisal and evaluation of the senior lien.

Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; *So. Central Livestock Dealers, Inc. v. Security State Bank*, 614 F.2d 1056, 1061 (5th Cir. 1980). Therefore, the court will grant Debtors' Motion to Value.

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

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

The Motion to Value Collateral filed by  
Debtors, having been presented to the court,  
and upon review of the pleadings, evidence,  
arguments of counsel, and good cause  
appearing,

**IT IS ORDERED** that the Motion pursuant to  
11 U.S.C. § 506(a) is continued to. . . .

\*\*\*\*\*

2. [15-28915](#)-C-13 ANTHONY BASURTO  
Pro Se

HEARING RE: CONFIRMATION OF  
PLAN  
12-2-15 [[14](#)]

DEBTOR DISMISSED: 12/07/2015

\*\*\*\*\*

**Final Ruling:** No appearance at the February 9, 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 December 2, 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 denied.**

Debtor was dismissed on December 7, 2015. Therefore, this motion is moot. The court's decision is to deny the motion for mootness.

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

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

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

**IT IS ORDERED** that the Motion is denied.

\*\*\*\*\*

\*\*\*\*\*

**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 January 14, 2016. 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. It is not clear if the Debtor can make the payments under the plan because the Debtor's monthly net income is negative \$638.24.

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 February 9, 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 December 28, 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 December 28,  
2015 is confirmed, and counsel for the Debtor  
shall prepare an appropriate order confirming  
the Chapter 13 Plan, transmit the proposed  
order to the Chapter 13 Trustee for approval

as to form, and if so approved, the Chapter 13  
Trustee will submit the proposed order to the  
court.

\*\*\*\*

\*\*\*\*\*

**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 January 13, 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 motion to value collateral being filed for California Service Bureau.
2. Schedule I contains discrepancies that indicate that the Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b).

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 February 9, 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 December 22, 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 December 22,  
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 February 9, 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, parties requesting special notice, and Office of the United States Trustee on December 23, 2015. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.)

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.

<b>The Objection to Proof of Claim Number 2 of the Internal Revenue Service is sustained</b>
--

Orlando Cisneros, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be general unsecured in the amount of \$217,270.28 and priority unsecured in the amount of \$1,50.00. Objector asserts that the claim alleges that the Debtor has a priority tax amount due and owing of \$1,500.00 for tax year 2014. The Claim identifies the tax period 2014 federal income tax returns have not yet been filed. Debtor contends that the 2014 income tax was paid. Debtor has submitted a true and correct signed copy of the Debtor's redacted 2014 federal income tax return. Ex. B, Dkt. 30.

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

The Chapter 13 Trustee filed a statement of nonopposition on December 30, 2015.

Based on the evidence before the court, the creditor's claim is disallowed in the amount of \$1,500.00 priority unsecured. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of the Internal Revenue Service, Creditor filed in this case by Orlando Cisneros, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim Number 2 of the Internal Revenue Service is sustained, and the claim is disallowed in the amount of \$1,500.00 priority unsecured.

\*\*\*\*\*

8. [15-28547](#)-C-13 SUN SIN  
Mark Wolff

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY OCWEN  
LOAN SERVICING, LLC  
11-13-15 [[17](#)]

\*\*\*\*\*

**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 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 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).

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

#### **Previously**

The court's decision was to continued the hearing to 2:00 p.m. on February 9, 2016 to allow the parties to complete their discussions to resolve the amount of the arrearage.

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.

**Creditor's Amended Objection to Confirmation of Plan** Dkt. 30

The Plan includes payments toward the Note and Mortgage with Secured Creditor, however the figures used by the Debtor are inaccurate. 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. Secured Creditor objects to any plan which proposes to pay it anything less than \$20,195.06 as the pre-petition arrearage over the life of the plan.

### **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.

\*\*\*\*

9. [15-27153](#)-C-13 D JACK  
GLM-1 Mark Wolff

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
LINDA/JAMES HOLLOWAY  
10-22-15 [[24](#)]

\*\*\*\*\*

**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. 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 . . . the Objection.**

Creditors, Linda and James Hollaway, oppose confirmation of the Plan on the basis that Debtor's chapter 13 plan was not filed in good faith under 11 U.S.C. § 1325(a)(7), and the plan and chapter 13 petition were submitted in violation of 11 U.S.C. § 727(a). Furthermore, Creditors assert Debtor is not entitled to a discharge pursuant to 11 U.S.C. § 1328(f) because he received a chapter 7 discharge within the four years preceding this case on December 28, 2011.

Creditors present a harried and complicated history with Debtor, stating that they elderly "dependent adults" under California Welfare and Institutions Code. Creditors wished to construct a home on their property located at 1901 55th Street, Sacramento, California. In June 2011, Creditors entered into a written contract with Debtor and his company Douglas Construction to construct the home for \$362,000.



On September 9, 2011, Debtor entered into chapter 7 bankruptcy. This bankruptcy sought to discharge several arbitration awards that had been found in favor of Jack's former customers arising out of Jack's breaches in contract and negligence.

Over the course of the year following the execution of the Jack/Hollaway contract, Creditors cut several checks to Debtor for purported reimbursements of engineering, material, and supplies for work he was purportedly performing. The checks that Debtor received were either cashed directly by Debtor or deposited into a separate bank account he opened but did not disclose in the chapter 7 bankruptcy filing. Creditors paid Debtor a total amounting to \$206,636 in 2011, which was not disclosed in the chapter 7 bankruptcy for which he received a discharge on December 28, 2011. Debtor also did not disclose the \$362,000 in income he anticipated receiving from Creditors.

In 2012, Debtor refused to provide invoices, receipts or documentation to demonstrate where the \$206,636 had gone. Due to failure to receive an accounting for their money and Debtor's refusal to return the unspent money, along with Debtor's demands for further funds, Creditors terminated their agreement with Debtor in October 2012 and retained counsel to recover monies paid to Debtor.

In May 2013, Creditors filed a complaint against Debtors in Sacramento Superior Court. In September 2013, parties agreed to undergo arbitration. In June-July 2014, the parties' dispute was tried before the arbitration judge. Debtor was found guilty of negligence and found to be in breach of contract. The judge also found that the Hollaways were "dependent adults" under the Elder Abuse and Dependent Adult Civil Protection Act. The judge found that Debtor is guilty of financial abuse because Debtor retained at least a portion of the \$206,636.18 "without a basis in law or contract." Debtor was ordered to return \$149,800.56 to Creditors, plus prejudgment interest, plus bear the costs of escrow, plus \$113,980.40 in attorneys fees.

On March 24, 2015, a hearing on Creditor's petition to confirm and correct arbitration award with the Sacramento County Superior Court was scheduled to be heard. On the day of that hearing, Debtor's attorney announced that Debtor filed chapter 13 bankruptcy on March 24, 2015. The Superior Court stayed the confirmation hearing.

First chapter 13 bankruptcy was filed on March 23, 2015, Case No. 15-22302. On June 2015, the court granted Creditor's and Trustee's objection to plan, in part concluding that the money Debtor was intending to disburse under the plan was part of the constructive trust that had been established in the arbitration proceedings, and that Debtor had failed to properly account for the extent of his interest in the community property of himself and his wife. Case No. 15-22302, Dckt no. 72. Debtor did not submit an amended plan, and as a result, Trustee brought a motion to dismiss, Case No. 15-22302, dkct. 75, for undue delay and prejudice which the court granted orally on September 9, 2015. Case no. 15-22302, Dckt. no. 81.

Second and instant chapter 13 bankruptcy was filed on September 11, 2015. The plan proposed in this plan is substantially identical to the one rejected during the last bankruptcy filing, which was rejected by the court.

Creditors assert numerous basis for objecting to Debtor's plan.

1. First, that Debtor's chapter 13 petition and plan were not filed in good faith in violation of 11 U.S.C. § 727(a).

2. Second, Debtor is not entitled to a chapter 13 discharge pursuant to 11 U.S.C. § 1328(f) as he has received a chapter 7 discharge within the four year preceding this case, 11 U.S.C. § 727.
3. Third, Debtor's bad faith and actions are an attempt to frustrate Creditors' attempts to claim secured creditor status.
4. Fourth, Debtor's submitted plan is substantially identical to the rejected plan in case number 15-22302, and Debtor has not cured the defects identified by the court--(1.) failing to account for community property assets; (2.) failing to demonstrate sufficient income to afford plan payments; (3.) inappropriately utilizing funds paid by Creditors held in constructive trust for disbursement to all creditors.
5. Debtor has abused the bankruptcy process in the past.
6. Debtor has failed to disclose all income and/or bank accounts in this action.
7. Debtor is attempting to, through this action and plan, misappropriate Creditor's property and fund his plan through monies that does not belong to Debtor.
8. Debtor's plan is not feasible because Debtor does not have sufficient monies to carry out this plan.
9. Debtor's plan may not be in the best interest of creditors.

## **DISCUSSION**

Creditors have raised a sufficient basis upon which to sustain their objection to plan confirmation. Primarily, the court is concerned that Debtor is attempting to claim an exemption in, and distribute to general unsecured creditors, an amount held in trust for Creditors according to Debtor's own schedules.

From the evidence provided to the court, there is reason to believe that Debtor may have filed his petition in bad faith to shield assets from creditors. At this time, the court cannot find that the plan was filed in good faith pursuant to 11 U.S.C. § 1325(a)(3). The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

As an aside, the court expresses concern as to the fact that the arbitration award asserted by Creditors has not been confirmed in state court, and that Creditor's counsel has not moved for stay relief or an order from the court to confirm absence of stay [FN1]. Furthermore, the court questions why Creditor's counsel has not filed an adversary proceeding in this case, or even the previous chapter 13 bankruptcy filing, to determine the non-dischargeability of their debt if the above-alleged facts are indeed as represented.

---

FN.1. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-22302) was dismissed on September 13, 2015, after Debtor was found to be causing undue delay prejudicial to

creditors. See Order, Bankr. E.D. Cal. No. 15-22302, Dckt. 81, September 13, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay appear to have ended as to the Debtor (not the estate) in the instant case 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). Here, the court docket reflects that no notice or motion has or was made to extend the automatic stay beyond the thirty-day period with regard to Debtor, and as such, it appears there may currently be no stay in effect as to Debtor.

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

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

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

**IT IS ORDERED** that. . . .

\*\*\*\*\*

Also #11

\*\*\*\*

**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 January 13, 2016. Fourteen days' notice is required. That requirement was met.

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

**The court's decision is to overrule the Objection.**

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

1. The Plan relies on the pending motion to value the collateral of Santander Consumer USA, LLC.

The court has granted the motion to value of Debtor, resolving Trustee's only basis for objection.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on November 18, 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 February 9, 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 January 6, 2016. 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.

<b>The Motion to Value secured claim of Santander Consumer USA, Inc., "Creditor," is granted.</b>
---

The Motion filed by Anita Vergara ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Chevy Tahoe ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$13,750 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 February 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 \$27,304.71. 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 \$13,750. *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 Anita Marie Vergara ("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 [name of creditor] ("Creditor") secured by an asset described as 2006 Chevy Tahoe ("Vehicle") is determined to be a secured claim in the amount of \$13,750, 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 \$13,750 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 January 13, 2016. 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 -----  
-----.

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

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

1. Debtor's plan fails liquidation. The plan does not pay unsecured creditors what they would receive in a chapter 7 bankruptcy, 11 U.S.C. § 1325(a)(4).
  - a. While the petition reflects that this case is filed by an individual, schedule I reflects that Debtor has a spouse. No spousal waiver signed by Debtor or Debtor's spouse has been filed with the court.
  - b. Debtor has claimed non-exempt equity. If Debtor obtains a spousal waiver to resolve the objection above, Debtor's claimed non-exempt equity appears to be \$19,301.69 where the



plan only proposes \$11,373.64. The Money Market Account as Golden One appears to have \$11,402.17 of non-exempt equity and the ESOP appears to have non-exempt equity of \$7,899.52.

- c. Debtor has listed various items of property with value deductions based on an assertion as to what would be the community property interest, for example the Debtor asserts on schedule A that real property is worth \$0.00 and is separate property. Trustee believes an evidentiary hearing may be required to determine these amounts.
2. The plan does not appear to be Debtor's best efforts. 11 U.S.C. § 1325(b). Debtor appears to be over the median income and proposes plan payments of \$250 per month for 60 months with a 22% dividend to unsecured creditors.
- a. Debtor received a total refund of \$5,281 for tax year 2011, \$4,430 for tax year 2012, and \$2,169 for tax year 2014. Debtor owed a total of \$10,938 for tax year 2012. No future tax refund income is projected on schedule I. While Trustee has received and reviewed the tax returns, Trustee has not filed the returns as exhibits s Trustee believes doing so may not be necessary. While Debtor maintains that they have reduced their withholding and do not expect a refund, where the 2015 tax year has concluded, Trustee maintains Debtor can provide evidence based on the 2015 tax year.
  - b. According to Debtor's pay advices rending 11/14/15, she received \$1,100 for a performance bonus and \$584.79 for a recognition award. This income does not appear to be projected on schedule I.
  - c. Debtor shows a negative \$1,338.13 on line 45 of form 22C-2 for calculated monthly disposable income. Debtor claims a marital adjustment for "Money spouse is investing into his retirement" and \$2,262 for "Spouse making secured debt payments and on debt which he is liable." Debtor is also claiming a total of \$280 in deductions for the car payments made by spouse, \$1,783 for Mortgage or rental expenses without deducting mortgage debt which may or may not be \$1,080. Trustee is not aware of the amount that the nonfiling spouse is paying to Bank of America for credit card or to Discover both of which are listed on schedule F as "unknown," and Chase or Capitol One.
  - d. Trustee believes Debtor is eligible for chapter 13 relief based on the likely total amount of unsecured debt under 11 U.S.C. § 109(e) because Debtor has listed two debts with amounts "unknown," Trustee raises the issue so it can be decided whether Debtor has provided sufficient proof in the objection to confirmation.

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.

\*\*\*\*

13. [15-29961](#)-C-13 STEVEN RATH  
ULC-1 Ronald Holland

MOTION TO AVOID LIEN OF  
PORTFOLIO RECOVERY ASSOCIATES  
1-11-16 [[14](#)]

**Also #14**

\*\*\*\*\*

**Final Ruling:** No appearance at the February 9, 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 creditors, and Office of the United States Trustee on January 11, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of Portfolio Recovery Associates for the sum of \$26,470.03. The abstract of judgment was recorded with Sacramento County on March 25, 2014. That lien attached to the Debtor's residential real property commonly known as 11595 Prospect Hill Drive, Gold River, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$465,000 as of the date of the petition. The unavoidable consensual liens total \$458,999 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$37,057 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A COURT DRAFTED ORDER**

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

**IT IS ORDERED** that the judgment lien of Portfolio Recovery Associates, Sacramento County Superior Court Case No. 34-2013-00145687-CU-CL-GOS, recorded on March 25, 2014, with the Sacramento County Recorder, against the real property commonly known 11595 Prospect Hill Drive, Gold River, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

\*\*\*\*\*

14. [15-29961](#)-C-13 STEVEN RATH  
ULC-2 Ronald Holland

MOTION TO AVOID LIEN OF  
AMERICAN EXPRESS CENTURION BANK  
1-11-16 [[19](#)]

\*\*\*\*\*

**Final Ruling:** No appearance at the February 9, 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 creditors, and Office of the United States Trustee on January 11, 2016. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of American Express Centurion Bank for the sum of \$4,860.74. The abstract of judgment was recorded with Sacramento County on December 15, 2015. That lien attached to the Debtor's residential real property commonly known as 11595 Prospect Hill Drive, Gold River, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$465,000 as of the date of the petition. The unavoidable consensual liens total \$458,999 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$37,057 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

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

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

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

**IT IS ORDERED** that the judgment lien of American Express Centurion Bank, Sacramento County Superior Court Case No. 34-2015-00181851, recorded on December 15, 2015, with the Sacramento County Recorder, against the real property commonly known 11595 Prospect Hill Drive, Gold River, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

\*\*\*\*\*

\*\*\*\*\*

**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 December 29, 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).

<b>The court's decision is to continue the Motion to Confirm the Plan to March 22, 2016 at 2:00 p.m.</b>
--

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

1. Debtor is \$1,530 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,530 is due February 25, 2015. The case was filed on November 3, 2015, and Debtor has paid \$1,530 into the plan to date. The plan cannot be confirmed under 11 U.S.C. § 1325(a)(2).
2. Debtors 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 Long Beach Mortgage. The motion was set for hearing on January 26, 2016, and was continued to March 22, 2016.

**DEBTORS' RESPONSE**

Debtors respond, stating that they have cured the delinquency, and the Motion to Value was continued to March 22, 2016 at 2:00 p.m.

The court will continue the instant motion to take place with the pending Motion to Value, which was continued to March 22, 2016.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to March 22, 2016 at 2:00 p.m.

\*\*\*\*\*



\*\*\*\*\*

**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 January 26, 2016. 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 -----.

<b>The Motion to Extend the Automatic Stay is granted.</b>
--

Boatamo Mosupyoe ("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. 12-22343) was dismissed on January 27, 2016, after Debtor became delinquent in plan payments. See Order, Bankr. E.D. Cal. No. 12-22343, Dckt. 190, January 27, 2016. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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 provides that his daughter unexpectedly passed away resulting in funeral and travel expenses, making plan payments not feasible. Debtor's circumstances have substantially changed so that the reason for dismissal in the prior case is not likely to recur and this case can be completed.

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.

\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the February 9, 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 December 14, 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. Chapter 13 Trustee filed an opposition based on delinquent plan payments and improper signature line, Dckt. 40, which he subsequently withdrew, Dckt. 43. No opposition to the Motion was filed any 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 December 14, 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.

\*\*\*\*\*

\*\*\*\*\*

**Final Ruling:** No appearance at the February 09, 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 January 5, 2016. 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 January 5, 2016 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 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 January 22, 2016. 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 -----  
-----.

<b>The Motion to Value secured claim of HSBC Mortgage Services, Inc. "Creditor," is granted.</b>
--

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8920 Bear Park Court, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$208,562 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 \$406,822.00. HSBC Mortgage Services, Inc.'s second deed of trust secures a loan with a balance of approximately \$81,503.19. 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 HSBC Mortgage Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 8920 Bear Park Court, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$208,562 and is encumbered by senior liens securing claims which exceed the value of the Property.

\*\*\*\*\*

\*\*\*\*\*

**Tentative Ruling:** The Motion to Sell 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 February 4, 2016. 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 -----  
-----.

<b>The Motion to Sell Property is granted.</b>
--

The Bankruptcy Code permits the 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. 8845 Brittany Park Drive, Sacramento, California.

The proposed purchaser of the Property is Phoebe Hsu and the terms of the sale are for the sale price of \$220,000. The transaction is a short sale pursuant to othe Home Affordable Foreclosure Alternatives. Debts are owed on the property to Ocwen Loan Servicing in the amount of \$264,094.31 and to Mirabella Investment Group, LLC in the amount of \$53,463.43. All liens

secured by real property shall be paid in full under the terms of the confirmed chapter 13 plan. Pursuant to the terms of the short sale, Ocwen will receive \$178,956 and Mirabella Investment Group, LLC will receive \$12,000. Debtors will receive \$10,000 for relocation costs from the sale. In the interim, the prospective owner has agreed to rent the residence to Debtors for \$1,450 per month until Debtors are able to complete their relocation. No escrow shall close without all liens and encumbrances being paid in accordance with the terms of the short sale agreement.

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: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Ernest Jordon Victorine, Jr. and Sharon Fern Victorine the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Ernest Jordon Victorine, Jr. and Sharon Fern Victorine the Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Phoebe Hsu or nominee ("Buyer"), the Property commonly known as 8845 Brittany Park Drive, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$220,000, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 49, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

\*\*\*\*\*