UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

July 29, 2014 at 2:00 p.m.

1.	14-25814-C-13 JME-1	DANIEL/ADRIANA NEVES Julius M. Engel	MOTION TO VALUE COLLATERAL OF SPECIALIZED LOAN SERVICING 7-11-14 [24]

Local Rule 9014-1(f)(2) Motion - 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 July 11, 2014. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to set the Motion to Value Collateral for an evidentiary hearing on [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 6771 Langston Way, Sacramento, California. The Debtors seeks to value the property at a fair market value of $310,597.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $360,995. Specialized Loan Servicing's second deed of trust secures a loan with a balance of approximately $44,995. Therefore, the

respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

The Bank of New York Mellon Trust Company, N.A. as Trustee for Flagstar home Equity Loan Trust 2007-1 Asset Backed Pass-Through Certificates, Series 2007-1, as serviced by Specialized Loan Servicing, LLC, opposes Debtor's Motion to Value based on the following:

(1.) Secured creditor filed a proof of claim (Claim 4) on June 30, 2014, in the amount of $45,319.07, including arrearage due of $402.43.

(2.) Debtor provided in adequate notice of this Motion under Rule 9014.1(f)(4). The Motion was filed on July 11, 2014, less than 28 days' before the hearing.

(3.) Creditor objects to Debtor's valuation of the property and provides a "Broker's Price Opinion" valuing the subject property at $373,000 (Exh. 1, Dkt.). Creditor requests a continuance to procure an appraisal of the properties value.

Discussion

The court is treating Debtor's Motion as though it was filed pursuant to LBR 9014-1(f)(2) because it was filed on fewer than 28 days' notice and is not requiring objections to be filed 14 days prior to the hearing.

The court is faced with a factual dispute over the value of the property. As such, the court's decision is to set the matter for an evidentiary hearing on **[date]** at **[time]**. The evidentiary hearing is the forum through which each party can present testimony and evidence for the court to weigh in making findings of fact concerning the value of the subject property.

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 to Value is set for an evidentiary hearing on **[date]** at **[time]**.

2. 12-38916-C-13 BERNICE SMITH MOTION TO MODIFY PLAN
FF-3 Brian H. Turner 6-19-14 [55]

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2014. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified 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 Trustee, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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 because the proposed payments are conflicting. Debtor states in section 1.01 of the plan that the payment is $1,216.28. Section 6.02 states that the Debtor has paid at least $23,193.56 into the plan. The plan payment of $1,283.43 will commence May 25, 2014 through October 25, 2017. This could be clarified in section 1.01 referenced Additional Provisions. Section 6.03 should reflect $23,193.56 total paid in, as of June 2, 2014 with payments of $1,283.43 commencing June 25, 2014 for the remainder of the plan.

Debtor has not responded to the Trustee's objection to confirmation. As it stands, 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.

3.	13-24823-C-13 PGM-4	GARRETT/ASHLEY WARREN Peter G. Macaluso	MOTION TO APPROVE LOAN MODIFICATION 6-30-14 [75]

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on June 30, 2014. 28 days' notice is required; that requirement was met.

Tentative Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Approve Loan Modification. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors request the court grant authorization for them to enter into a trial loan modification. Debtors' Motion lacks any reference to the Lender subject to the loan modification agreement; however, Debtors' declaration (Dkt. 77) and the attached loan modification documents (Dkt. 78) clarify that the subject lender is Wells Fargo Bank, N.A.

The property securing the loan being modified is commonly known as 990 Sierra View Circle #3, Lincoln California. Debtors have completed a trial loan modification and will commence permanent loan modification payments on July 1, 2014. The modified payment will be $1,012.39 per month (previously $1,109.79) at 4.5% interest (previously 4.625%). The loan principal will be reduced from $137,415.99 to $122,449.95.

A letter from Wells Fargo Bank, N.A. discussing the proposed loan modification terms and the Trial Period Plan is attached to the instant motion as Exhibit A (Docket Item No. 78).

Opposition

The Chapter 13 Trustee filed an opposition to the Motion to Approve the Loan Modification. Trustee does not oppose the approval of a trial loan

modification based on the letter offer (Dkt. 78) and the Trustee requests that the court permit Debtor to accept the offer.

Trustee's objection is that Debtors have not provided a formal agreement as required by Fed. R. Bankr. P. 4001(c) for approval. The modification document provided by Debtor is an offer letter from Wells Fargo Bank, N.A..

Response

Debtors respond and state that they are seeking permission to enter into the modification agreement.

Discussion and Ruling

The court's decision is to grant the Motion as authorizing Debtors to accept the trial loan modification with Wells Fargo Bank, N.A. The letter with the modification terms states that Debtors are eligible for a loan modification and that if they comply with the terms of the Trial Period Plan, the Bank will modify their loan.

The court will require Debtors to return for approval of the final terms of the loan modification agreement when the trial period is complete.

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 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 approved and Debtors are authorized to accept the Trial Period Plan with Wells Fargo Bank, N.A.
>
> **IT IS FURTHER ORDERED** that Debtors must seek final approval of the permanent terms of the loan modification with Wells Fargo Bank, N.A. when Debtors successfully complete the Trial Period Plan.

4. 13-31627-C-13 JLB-2 DAVID/KAREN BORBA James L. Brunello

OBJECTION TO CLAIM OF OCWEN LOAN SERVICING, LLC, CLAIM NUMBER 10
6-11-14 [56]

Local Rule 3007-1(c)(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 June 11, 2014. 44 days' notice is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). 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 Objection to Proof of Claim of Ocwen Loan Servicing, LLC is overruled without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

MOTION DOES NOT COMPLY WITH THE REQUIREMENTS OF LBR 3007-1(a)

The Objection to Claim of Ocwen Loan Servicing, LLC does not comply with the Local Bankruptcy Rules.

Local Bankr. Rule 3007-1(a) provides the following:

> An objection to a proof of claim shall include the name of the claimant, the date the proof of claim was filed with the Court, the amount of the claim, and the number of the claim as it appears on the claims register maintained by the Court. Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim.

Here, Debtor's Motion lacks reference to the date the claim was filed and the amount of the subject claim.

Despite the pleading deficiencies, the court will consider the

record and determine whether the Objection has merit.

DISCUSSION

Debtors Objection is to the claim of "Ocwen Loan Servicing LLC (Claim No. 10)." Debtors argues that they are current on their payments on this claim. In support of their Objection, Debtors attached a letter from Ocwen Loan Servicing LLC, dated June 4, 2014, which states that the loan is current and due for the 07/01/14 payment. See Exhibit 1, Docket 56.

When reviewing the claims register, the court only identifies four total claims:

Claim 1: Wells Fargo Bank, N.A. for $30,886.64
Claim 2: Ocwen Loan Servicing, LLC for $971,848.69
Claim 3: Premier BankCard/Charter for $771.00
Claim 4: Ocwen Loan Servicing, LLC for $971,848.69

Note that Claim 4 is a Notice of Transfer relating to Claim 2.

Debtor is objection to Claim 10; however, there is no Claim 10 on the claims register. The court is not inclined to grant relief disallowing a creditor's rights when the pleadings are unclear as to the precise subject creditor.

The court's decision is to overrule the objection without prejudice due to pleading issues. The pleadings do not comply with the basic requirements of Local Bankr. Rule 3007-1(a) and leave out required information. Further, the pleadings are misleading as they speak to disallowing Claim No. 10; however, the claims register only lists four (4) potential claims that may be 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 Claim of Ocwen Loan Servicing, LLC filed in this case 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 objection to Proof of Claim of Ocwen Loan Servicing, LLC is overruled without prejudice.

5. 14-20830-C-13 DIANA OREHEK — MOTION TO CONFIRM PLAN
JLB-2 James L. Brunello — 6-12-14 [50]

Final Ruling: The Debtor having filed a "Notice of Withdrawal" for the pending Motion to Confirm Plan, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Confirm the Plan, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Confirm the Plan.**

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 Confirm the Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm is dismissed without prejudice.

6. 11-36541-C-13 PAUL CHU — NOTICE OF DEFAULT AND
DPC-1 Muoi Chea — APPLICATION TO DISMISS
6-11-14 [83]

Hearing continued to September 10, 2014 at 10:00 a.m.

7. 14-26160-C-13 MICHAEL MCCALL MOTION TO EXTEND AUTOMATIC STAY
CJJ-1 Charnel J. James 6-11-14 [10]

Local Rule 9014-1(f)(2) Motion. No Opposition filed.

Correct Notice Not Provided. No Proof of Service was filed on the docket.

Tentative Ruling: The Motion to Extend Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Extend the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

On June 11, 2014, the court entered an order granting Debtor's Ex Parte Motion to Extend the Automatic Stay, on an interim basis through August 15, 2014. The court further ordered that a final hearing on the Motion shall be held July 29, 2014. Before July 20, 2014, Debtors were to file Supplemental Pleadings in support of the Motion and Notice of Hearing, and serve the Original Pleadings, Supplemental Pleadings, and notice of the Final Hearing. Any Opposition to the Motion was to be filed on or before July 15, 2014, with any Reply due by July 22, 2014.

Requested Relief

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. A review of Debtor's past filings shows that this is Debtor's third bankruptcy case pending within the last year.

Debtor's first case was file October 29, 2013 (13-33887) and was dismissed on February 20, 2014 because Debtor did not make plan payments and did not provide the Chapter 13 Trustee with requested tax documents. Debtor's second case was filed on March 5, 2014 (14-22263) and was dismissed on June 3, 2014 because Debtor did not attend the Meeting of Creditors and did not provide the Trustee with requested tax documents. The instant case is Debtor's third and was filed on June 11, 2014. 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 entry of the June 11, 2014 order, the automatic stay was extended

through August 15, 2014.

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

1. Why was the previous plan filed?

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

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

Here, Debtor argues that the instant petition was filed in good faith. He previously had rouble attending the Meeting of Creditors because he does not have a driver's license and is currently residing in Texas with his daughter and son-in-law. Debtor and his daughter will be in California in July, as his son-in-law will soon be discharged from his Army post in El Paso, Texas.

As for the tax documents, Debtor states that he had not filed taxes for the past five years and was not in possession of any tax documents.

Although the court understands the Debtor may have some organizational and communication issues prosecuting his bankruptcy, he has not complied with the previous interim court order. Debtor has provided the court with no supplemental pleadings, as was ordered. Further, Debtor has not filed proof of service of the original pleadings, supplemental pleadings, nor notice of final hearing.

Therefore, the court's decision is to deny the full relief requested; however, the stay will remain in effect until August 15, 2014.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied and the Automatic Stay will remain in effect through August 15, 2014.

8. 13-22572-C-13 LAFAYETTE HAYES CONTINUED MOTION TO MODIFY PLAN
DEF-1 David Foyil 3-10-14 [22]
Thru #9

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2014. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified 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 Trustee, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to continue the Motion to Confirm the Modified Plan to [date] at **[time]**. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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. Debtor settled a claim with the Yellow Cab Cooperative for $4,008.38. Debtor used this funds to help his daughter and her children relocated by buying them out of the remaining term of their lease agreement, repairing the new rental property, and paying for his daughter's divorce.

   The funds appear to be property of the estate. Debtor did not disclose receipt of the settlement until the present modified plan was filed in an attempt to correct Debtor's plan payment delinquency.

   Trustee believes Debtor has the ability to claim these funds as exempt; however, Debtor should amend his schedules to reflect this interest.

2. Debtor included a letter as Exhibit C, dated November 14, 2013, informing him that all federal student loans or TEACH Grant services obligations were discharged due to permanent disability.

   The student loan identified to be discharged is that

attributed to Educational Credit Management Corporate in the amount of $9,118.00. ECMC filed an unsecured claim on May 13, 2013 for $11,047.16 (Claim 12). Debtor's modified plan proposes to pay 76% to unsecured creditors. Debtor has not filed an objection to claim and the plan provides that the claim will be included in the distribution to unsecured creditors.

3. Debtor's modified plan proposes to adjust monthly dividends for months that have passed regarding attorneys' fees and creditor Universal Acceptance Corporation.

   Section 6.01 proposes payments of $208.347 for months one (1) through twelve (12) for administrative fees un section 2.07©, where under the confirmed plan payments were $467.00 for five (5) months, then $165.00 for one (1) month. While both pay schedules equal $2,500, the Trustee has paid administrative fees in full under the confirmed plan and cannot adjust the payments after the fact.

   Section 6.02 proposes a monthly dividend to Universal Acceptance Corporation of $286.76 for months one (1) through twelve (12), then $93.00 thereafter. Under the confirmed plan, payments were $189.00 for five (5) months, $491.00 for one (1) month, and then 4656.00 for months seven (7) through thirteen (13).

   Through month twelve (12) under the confirmed plan, Trustee has disbursed $3,441.11 in principal and $154.20 in interest. While $286.76 for twelve (12) months totals $3,441.12, and would be equal to what the Trustee disbursed in principal, the Trustee cannot adjust the monthly dividend for payments that have already been disbursed.

   Debtor's Motions indicates payments made under the confirmed plan to Universal Acceptance Corporation of $189.00 for five (5) months, $497.00 for one (1) months, $656.00 for seven (7) months, and then $586.26 for one (1) month. This is inaccurate because payment in month six (6) was $491.00, not $497.00, and there was never a payment of $568.26 made.

4. Debtor's Motion states that no unsecured claim is to be paid prior to or concurrent with any secured claims while also stating that the plan provides for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other secured claim. These statements are contradictory.

Debtor's Response

Debtor filed amended Schedules B & C, per the Trustee's suggestion and included the relevant Settlement with the Yellow Cab Cooperative.

Debtor filed an objection to the claim of Educational Credit Management Corporation (Dkt. 35).

Debtor is amenable to including special provisions that do not

change the disbursement amounts for previous payments made to creditors from the trustee.

Page 7, line 21 of Debtor's motion was a clerical error (the contradiction pointed out by the Trustee). The sentence should state that unsecured and secured claims are going to be paid concurrently.

Discussion and Ruling

The court's decision is to continue the motion to confirm the plan to **[date]** at **[time]** to be heard with a concurrently pending Objection to Proof of Claim Number 12 of Educational Management Corporation which is also set to be continued. The court recognizes that Debtor has made efforts to respond to the Trustee's objections; however, the issue concerning treatment of ECMC's claim remains outstanding and the court cannot render a decision on confirmation until the objection is resolved.

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

9. 13-22572-C-13 LAFAYETTE HAYES
DEF-2 David Foyil

OBJECTION TO CLAIM OF EDUCATION CREDIT MANAGEMENT CORPORATION, CLAIM NUMBER 12
7-14-14 [35]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Not 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 July 14, 2014. By the court's calculation, 16 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). Consequently, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The Objection to Proof of Claim number 12 of Educational Credit Management Corporation is continued to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Pursuant to Local Bankr. R. 3007-1(d)(3), objections to claims in Chapter 13 cases shall be set for hearing pursuant to Local Bankr. R. 3007-1(b)(1) or (b)(2).

Local Bankr. R. 3007-1(b)(1) requires that objections be set on forty-four (44) days' notice while Local Bankr. R. 3007-1(b)(2) provides an alternate notice period of thirty (30) days. Here, Debtor has only provided sixteen (16) days worth of notice to creditors and interested parties.

The court's decision is to continue the hearing on the Objection to the Claim of Educational Credit Management Corporation to **[date]** at **[time]** to provide sufficient notice under the Local Bankruptcy Rules.

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 Educational Credit Management Corporation filed in this case by xxxx having

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

IT IS ORDERED that the objection to Proof of Claim number 12 of Educational Credit Management Corporation is continued to **[date]** at **[time]**.

10. 13-34974-C-13 VINCENT/LISA ABILA — MOTION TO SELL
MMN-4 Michael M. Noble — 6-26-14 [83]

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 26, 2014. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). 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 court's tentative decision is to deny the Motion to Permit Debtor to Sell Property. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Chapter 13 Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtors in this case, Vincent Abila and Lisa Abila, propose to sell the real property located at 2321 Thelma Avenue, Sacramento, California. The sales price is $105,000, and the buyers are not disclosed in the body of Debtors' Motion. The terms of the sale are set forth in the California Residential Purchase Agreement and Joint Escrow Instructions, filed as Exhibit B in support of the Motion. Dckt. 85.

RESPONSE BY TRUSTEE

Trustee states that he does not oppose the Motion to Sell the property commonly known as 2321 Thelma Avenue, Sacramento, California, as long as the creditor agrees to the short sale and Debtors do not receive funds from the transaction. Dckt. No. 90.

REVIEW OF THE MOTION

Debtors have not stated the grounds upon which they request relief with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The Motion to Sell does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the terms of the sale. Debtors attach their proposed purchase agreement with the unidentified buyer (Exhibit B, Dckt. No. 85), but exclude critical details required to be incorporated into a Motion to Sell, including information regarding, for example,

- The proposed distribution of the proceeds;
- whether the liens secured by loans on the property will be satisfied through the funds received in the sale;
- information about overbidding procedures for potential bidders who may choose to appear at the hearing;
- what connection, if any, the Buyers have to Debtors;
- whether the broker or real estate agent, who appears to be Century 21 Select Real Estate and All Professional Realty in this case, will be paid commission, and if so, what percentage of the actual purchase price Broker will be paid upon consummation of the sale;
- whether Debtors are receiving any proceeds of the sale, or what will happen to any monies not disbursed to creditors holding claims secured by the property or paying the fees and costs allowed, etc.

The Motion does not comply with the requirements of Local Bankruptcy Rule 3015-1. Local Bankruptcy Rule 3015-1(b)(1) states that debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of $1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor must comply with LBR 3015-1(i).

Local Bankruptcy Rule 3015-1(i)(4) provides that:

> Sale of Property. The Court may approve an *ex parte* motion by the debtor to sell real or personal property with a value of $1,000.00 or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion. The debtor's motion and the trustee's approval are their certification to the Court that:
>
> (A) The sale price represents a fair value for the subject property;
>
> (B) All creditors with liens and security interests encumbering the subject property will be paid in full before or simultaneously with the transfer of title or possession to the buyer;
>
> (C) All costs of sale, such as escrow fees, title insurance, and broker's commissions,

will be paid in full from the sale proceeds;

(D) The sale price is all cash;

(E) The debtor will not relinquish title to or possession of the subject property prior to payment in full of the purchase price; and

(F) The sale is an arm's length transaction.

Debtors' Motion does not state whether the purchase price represents a fair value for the property, whether all creditors with security interests encumbering the property will be paid in full before or concurrently with the transfer of title from Debtors to buyers; the costs of sale; whether the sale prices is all cash; and whether the sale is an arm's length transaction.

Merely, the Motion asserts states that the property is valued on Debtors' Schedule A at $125,00.00, and secures a deed of trust for repayment of that same amount to the creditor "Ocwen." The Motion alleges that Debtors received a cash offer in the amount of $105,00, but does not state the identity the purchaser or nominee buyer in the sale of the property, and whether the Buyer is an insider in this transaction. The Motion further states that Debtors request the court to approve the sale, subject to the Debtors receiving "no proceeds" and contributing "no funds" to facilitate the sale, when Debtors should anticipated that any net monies not disbursed to creditors holding claims secured by the subject property would be remitted directly to the Chapter 13 Trustee from escrow.

Additionally, the sale appears to be contingent on the approval of Ocwen (presumably Ocwen Loan Servicing, LLC), the creditor holding a claim secured by a deed of trust on the Debtors' property. The approval of Ocwen constituting a condition precedent to whether or not the sale will occur, the court cannot issue an order that will be rendered ineffective if that condition has not been satisfied. A review of the court docket shows that Debtors have not produced a statement of approval, or any documents and evidence indicating that this secured creditor has agreed to a short sale of the property securing their claim, which is apparently being sold for less than its fair market value.

The Motion does not state what percentage of the proceeds "Ocwen" will be receiving from the sale, and whether all liens on the property will be satisfied by the distribution of proceeds from the sale. The Debtors themselves seem to be unaware of the commission taken out of the purchase price, to be paid to the listing and real estate agents upon consummation of the sale.

It is particularly troubling to the court that Debtors, in their 11 U.S.C. § 1303-imbued rights and powers as a Trustee in the use, sale, or lease of their property would be so uninformed about the distribution of proceeds from their proposed sale (for which they seek approval from the court), that Debtors do not know the amount of proceeds the real estate agents involved in the matter will be drawing from the purchase price.

In the absence of such information, the court cannot determine whether the proposed sale is in the best interest of the Estate, and no procedures have been established to allow the court to consider any

additional offers from other potential purchasers at the scheduled hearing. The court will not grant the Motion to Permit Debtor to Sell Property.

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 sell Property 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 denied without prejudice.

11. 14-24184-C-13 DONCELLA LOGAN
APN-1 Lucas B. Garcia
Thru #12

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
5-30-14 [14]

TOYOTA MOTOR CREDIT CORPORATION VS.

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, Chapter 13 Trustee, and Office of the United States Trustee on May 30, 2014. Twenty-eight days' notice is required. This requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 court's tentative decision is to dismiss the Motion for Relief as moot. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to an asset identified as a 2004 Nissan 350Z, VIN # ending in 2233. The moving party has provided the Declaration of Cheryl Nishimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nishimura Declaration asserts that Debtor and non-filing Co-Debtor, Mitchell Logan, executed a written contractual agreement on March 6, 2009 to purchase a 2004 Nissan 350Z. The Security Agreement was assigned by Lexus of Sacramento to Movant on March 6, 2009. Pursuant to the terms of the agreement, Debtor and/or non-filing co-Debtor are obligated to pay Movant forty-eight (48) monthly payments of $549.55. Under the Chapter 13 Plan proposed by Debtor, Movant is to be paid directly, under the terms of the prevailing agreement.

The agreement reach maturity on November 7, 2013 and Debtor remains in possession of the vehicle. The contractual balance of $11,569.91 is due an owing. Movant asserts that the vehicle is valued at $11,835.91.

Chapter 13 Trustee

The Chapter 13 Trustee filed a statement of non-opposition.

Debtor's Opposition

Debtor argues that the vehicle is a necessity for her to work and maintain a stable income. Debtor states that she amended her plan to allow for payment of the Creditor.

Discussion

On June 12, 2014, Debtor cause to be filed an amended Chapter 13 Plan and Motion to Confirm the amended Plan. The hearing on the plan is set for July 29, 2014.

In the Amended Plan, Debtor moves Movant's claim from Class 4 to Class 2 and lists the amount claimed by Movant as $7,000.00 and proposes a monthly dividend of $120.00. Based on the information provided by Movant, the claim amount is $11,569.91. Debtor may be attempting to improperly modify Movant's claim through the Plan. Ultimately, that is an issue for the confirmation hearing.

The court's decision is to continue the hearing on the Motion for Relief from Stay to July 29, 2014 when the court will review the proposed plan for confirmation. Movant can review the proposed treatment and determine whether it can work with Debtor in receiving payment of its claim through a Chapter 13 plan.

The Creditor states that it objects to Debtor's inclusion of this obligation in Debtors' Chapter 13 Plan, because the Debtor has been discharged of her personal obligation to pay for the property as a consequence of her Chapter 7 bankruptcy filed on May 1, 2012, and her subsequent discharge of the indebtedness on July 5, 2013. Debtor's prior Chapter 7 bankruptcy filed in the Eastern District of California is identified by Case Number 12-28510. In addition to the foregoing, Creditor further observes that as a consequence of the Debtor's current bankruptcy representing the second bankruptcy case within four (4) years, and having received a discharge pursuant to May 1, 2012, Chapter 7 bankruptcy petition, the Debtor is not entitled to discharge in the present proceeding pursuant to 11 U.S.C. §1328(f) and as a consequence thereof is not entitled to cram down the amount of Secured Creditor's lien.

DENIAL OF DISCHARGE

Debtor Doncella Melinda Logan filed this Chapter 13 case on April 23, 2014, and is represented in this case by Lucas B. Garcia. A search of associated cases on the court docket shows that Debtor also filed a voluntary Chapter 7 petition on May 1, 2012, Case No. 12-28510, for which Debtor received a bankruptcy discharge on July 5, 2013. Debtor was represented by Bradford Hodach, a different attorney than Debtor's attorney of record in the present case.

Additionally, Debtor filed a joint Chapter 13 bankruptcy with Mitchell Logan on November 29, 2011, and was represented by Scott D. Hughes in that case. That case was ordered dismissed by the court on March 7, 2012, after the Debtors failed to file a timely Motion to Confirm plan after their previously proposed plans were denied, thus causing prejudicial delay to creditors in that case. Case No. 11-47800.

Section 727(a)(8) provides that a Chapter 7 debtor cannot receive a discharge if the debtors has previously obtained a discharge in a case commenced within eight years of the current case. Debtor received a discharge on May 1, 2012 in Case No. 12-28510.

The prior case was commenced within eight years before the date of the filing of the petition in the current case, April 23, 2014. Therefore, the Debtor is not eligible for a discharge in their current case. Debtor is not entitled to discharge in the present proceeding pursuant to 11 U.S.C. §1328(f) and is not entitled to "strip down" the amount of the Creditor's lien.

The Debtor is denied a discharge in her current case, Case No. 14-24184, pursuant to the provisions of 11 U.S.C. § 727(a)(8). The court has ordered that Debtor be denied her discharge in the court's ruling on Debtor's Motion to Confirm the Amended Plan, LBG-1. This present Motion for Relief will be rendered moot, since this is is the Debtor's second prior bankruptcy case in the last year and the automatic stay has not been extended by the Debtor.

Debtor received a discharge in her previous case on July 4, 2013, Case No. 12-28510. See Order, Bankr. E.D. Cal. No. 12-28510, Dckt. No. 90, July 5, 2013. 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. Debtor did not seek an order from the court extending the stay beyond thirty days upon showing that the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). Thus, the stay has been lifted, Creditor will not need an order granting it relief from the stay in order to exercise its rights under applicable non-bankruptcy law, and the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot.

12. 14-24184-C-13 DONCELLA LOGAN MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 6-12-14 [21]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, all creditors, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

Tentative Ruling: 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). A creditor having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the secured creditor, Toyota Motor Credit Corporation ("Creditor") opposes the Motion to Confirm Second Amended Chapter 13 Plan.

The Creditor states that on March 6, 2009, the Debtor entered into a written Retail Installment Sale Contract - Simple Interest Finance Charge with Lexus of Sacramento. The Security Agreement was assigned by Lexus of Sacramento to the Creditor on or about March 6, 2009. Upon executing the Security Agreement, the Debtor agreed and became obligated to pay the sum of $16,897.25, with interest accruing at the contract rate of 23.29% per annum, for the financed purchase of the subject property.

History of Discharges

The Creditor states that it objects to Debtor's inclusion of this obligation in Debtors' Chapter 13 Plan, because the Debtor has been discharged of her personal obligation to pay for the property as a consequence of her Chapter 7 bankruptcy filed on May 1, 2012, and her subsequent discharge of the indebtedness on July 5, 2013. Debtor's prior Chapter 7 bankruptcy filed in the Eastern District of California is identified by Case Number 12-28510. In addition to the foregoing, Creditor further observes that as a consequence of the Debtor's current bankruptcy representing the second bankruptcy case within four (4) years, and having received a discharge pursuant to May 1, 2012, Chapter 7 bankruptcy petition, the Debtor is not entitled to discharge in the present proceeding pursuant to 11 U.S.C. §1328(f) and as a consequence thereof is not entitled to cram down the amount of Secured Creditor's lien.

Exceeds Maximum Time

Creditor further objects to Debtor's inclusion of this obligation in Debtors' Plan, in that Debtors are attempting extend their monthly payments to Creditor over the sixty (60) month term of the Plan, when in fact the Agreement reached maturity on November 7, 2013, prior to Debtor's filing of this bankruptcy proceeding. As such, Debtors' proposed Plan will extend payment to Creditor approximately five (5) years beyond the maturity date of the prevailing Agreement and therefore expose Creditor to significantly greater risk of loss due to the extension of the loan period. In essence, Debtors' proposed Plan will turn Debtor's original four (4) year obligation with Creditor into a nine (9) year obligation.

Valuation

Based upon information derived from the automated Kelley Blue Book Auto Market Report, a true and correct photocopy of which is filed separately herewith and which is incorporated herein by reference, pursuant to 11 U.S.C. §506(a)(2) the property is currently believed to have a retail, replacement value to Debtor of $11,835.00. This is the value indicated for collateral of this year, make, model and general features in the reference guide most commonly used source of valuation data used by Movant in the ordinary course of business for determining the value of this type of collateral.

Creditor further objects to the $7,000.00 valuation allocated to its secured collateral under Debtor's proposed Plan in that should Secured Creditor be forced to accept the low valuation of its secured claim hereunder, Secured Creditor's security interest will be severely diminished on collateral which already depreciates at a rapid rate during the normal course of its use.

The value allocated to Creditor's collateral under Debtor's proposed Plan is substantially below the value given in the Kelley Blue Book. In the absence of further evidence explaining the valuation discrepancy, Secured Creditor contends that Debtor has not satisfied the burden under 11 U.S.C. §506(a)(2). Based thereupon, Debtor's proposed Plan does not comply with 11 U.S.C. § 1325(a) because it does not pay Creditor the present value of its secured claim and, therefore, Debtor's Plan cannot be confirmed as is presently proposed.

Adequate Protection Payments

Creditor further objects to the $120.00 monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of Creditor's security will depreciate at a much higher rate than that at which Creditor will receive adequate protection payments under the Plan.

Interest Rate

Moreover, as a matter of law and of equity, and pursuant to 11 U.S.C. § 506(b), Creditor, an oversecured creditor hereunder, is entitled to receive the contract rate of interest of 23.29% on its secured claim, as opposed to the low rate of 4.00% proposed by Debtor hereunder.

Lack of Insurance Coverage

Moreover, pursuant to the terms and conditions of the prevailing Security Agreement, Debtor agreed to keep the property properly insured at all times in an amount and with an insurer acceptable to Secured Creditor. Debtor further agreed to make the loss payable clause of any and all such insurance coverage payable in the name of Secured Creditor for as long as Debtor was indebted to it.

After reviewing the books and records concerning Debtor's account, Creditor discovered that it had not been provided with valid, written proof of Debtor's current insurance coverage for the property. In light of the foregoing, Creditor contends that Debtor is operating the property without having any insurance coverage thereon and, accordingly, due to Debtor's failure to provide Creditor with proof of insurance coverage on the property and in order to properly protect its security interest therein, Secured Creditor will be forced to purchase its own insurance coverage.

This lack of insurance coverage on the property has not only violated the parties' contractual agreement which has placed Creditor in an unfavorable and questionable position under this bankruptcy proceeding, but has also violated Section 16451 of the California Vehicle Code as it applies to mandatory insurance coverage, which acts have placed an undue, unnecessary burden on Creditor.

Creditor believes that if it is forced to accept its inclusion under Debtor's Plan as is presently proposed, Creditor will be prejudiced by its position thereunder and Creditor will continue to suffer substantial, mounting losses. Lastly, Debtor has an outstanding balance of $11,569.91 on the account with Creditor. As such, Creditor is entitled to payment of its reasonable attorneys' fees and costs pursuant to the applicable provisions of 11 U.S.C. § 506(b) and pursuant to the applicable provisions of the prevailing Security Agreement in light of the fact that Debtor has :forced Creditor to defend its position under the above-entitled matter."

DENIAL OF DISCHARGE

Debtor Doncella Melinda Logan filed this Chapter 13 case on April 23, 2014, and is represented in this case by Lucas B. Garcia. A search of associated cases on the court docket shows that Debtor also filed a voluntary Chapter 7 petition on May 1, 2012, Case No. 12-28510, for which Debtor received a bankruptcy discharge on July 5, 2013. Debtor was represented by Bradford Hodach, a different attorney than Debtor's attorney of record in the present case.

Additionally, Debtor filed a joint Chapter 13 bankruptcy with Mitchell Logan on November 29, 2011, and was represented by Scott D. Hughes in that case. That case was ordered dismissed by the court on March 7, 2012, after the Debtors failed to file a timely Motion to Confirm plan after their previously proposed plans were denied, thus causing prejudicial delay to creditors in that case. Case No. 11-47800.

Section 727(a)(8) provides that a Chapter 7 debtor cannot receive a discharge if the debtors has previously obtained a discharge in a case commenced within eight years of the current case. Debtor received a discharge on May 1, 2012 in Case No. 12-28510.

The prior case was commenced within eight years before the date of the filing of the petition in the current case, April 23, 2014. Therefore,

the Debtor is not eligible for a discharge in their current case. Debtor is not entitled to discharge in the present proceeding pursuant to 11 U.S.C. §1328(f) and is not entitled to "strip down" the amount of the Creditor's lien.

The Debtor is denied a discharge in her current case, Case No. 14-24184, pursuant to the provisions of 11 U.S.C. § 727(a)(8). As such, Debtor's Motion to Confirm the Amended Chapter 13 Plan will be denied.

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.
>
> **IT IS FURTHER ORDERED** that the Debtor, Doncella Melinda Logan, is denied a discharge in her current case, Case No. 14-24184, pursuant to the provisions of 11 U.S.C. § 727(a)(8).

13. 14-22285-C-13 CHRISTOPHER/ANNELI FIEL MOTION TO CONFIRM PLAN
MET-1 Mary Ellen Terranella 6-16-14 [29]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee opposes confirmation of the Amended Plan on the basis that the Debtors are $2,976.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,738.00 is due on July 25, 2014. The case was filed on March 6, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. The Debtors have paid $1,238.00 into the Plan to date.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the 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.

14. 11-42286-C-13 FERNANDO/GABRIELA CASTELLANOS
BLG-3 Pauldeep Bains
MOTION TO MODIFY PLAN
6-10-14 [49]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee objects to confirmation of the plan on the basis that Debtors have paid ahead $119.00 under the proposed plan.

Debtors' modified plan proposes plan payments of $9,088.00 as of June 9, 2014, then $165.00 per month for months 33 through 60. Under the modified plan, Debtors would have needed to pay the Trustee through June 2014, a total of $9,253.00. The Trustee's records reflect that the Debtors have actually paid a total of $9,372.00, a difference of $119.00. It appears that Debtors could afford the confirmed plan payment of $284.00 at least through June of 2014. Dckt. No. 56.

RESPONSE TO OBJECTION BY DEBTORS

Debtors respond to the Trustee's Objection by acknowledging that they did make a payment in June 2014 of $284.00, rather than the modified plan amount of $165.00. Dckt. No. 59.

Debtors state that they will provide an order confirming plan which will address the trustees objection as follows:

> "IT IS FURTHER ORDERED that the additional provisions are changed as follows: Debtors have paid a total of $9,375.00 through June 2014. Debtor will commence with a plan payment of $165 starting in July 2014 for months 34 through 60."

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, Debtor's Chapter 13 Plan filed on June 10, 2014, with the following amendment to the Additional Provisions of the Plan: Debtors have paid a total of $9,375.00 through June 2014. Debtor will commence with a plan payment of $165 starting in July 2014 for months 34 through 60 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.

15. 14-24287-C-13 BYAN SCHULTZ — MOTION TO VALUE COLLATERAL OF SPECIALIZED LOAN SERVICING, LLC
EWV-42 Eric W. Vandermey — 6-30-14 [26]

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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 27, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral 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 respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's tentative decision is to deny the Motion without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5068 Oakbrook Circle, Fairfield, California. The Debtor seeks to value the property at a fair market value of $247,000.00 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 held by Nationstar Mortgage secures a loan with a balance of approximately $276,094. "Creditor" Specialized Loan Servicing, LLC's second deed of trust secures a loan with a balance of approximately $92,778.00. Therefore, Debtor argues that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized, and that the creditor's secured claim should determined to be in the amount of $0.00, and 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).

INCORRECTLY IDENTIFIED CREDITOR

Debtor seeks to value the collateral of "Specialized Loan Servicing, LLC." However, it has been repeatedly represented in this court that loan servicing companies including Specialized Loan Servicing, LLC, are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the Second Deed of Trust is held by Specialized Loan Servicing, LLC's indicates that Debtors have no knowledge of who the actual creditor in interest is who holds the claim secured by the second deed of trust.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Specialized Loan Servicing, LLC. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

The misidentification of creditors for purposes of § 506(a) motions will automatically be fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. In most cases where Debtors have filed a Motion to Value naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights.

In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

Debtor provide no exhibits showing that Specialized Loan Servicing, LLC is the actual owner of the underlying obligation. Debtor's Schedule D lists the Creditor holding a deed of trust in the 5068 Oakbrook Circle, Fairfield, California property as "Specialized Loan Services," which holds a claim valued at $92,778.00 without deducting the value of the collateral, but no other references to this supposed "creditor" appear on the court docket. Dckt. No. 1 at 23.

No assignment or transfer of claim appears on the docket transferring any interest to Specialized Loan Servicing, LLC. The court is not certain how Debtors can name Specialized Loan Servicing, LLC as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation.

Additionally, no Proof of Claim has been filed on the claims registrar by Specialized Loan Servicing, LLC, which may assert that it is the holder of the Note secured by the deed of trust, or any other party claiming that it is the actual owner of the subject claim. The real

creditor of interest in possession of the Note may not have received notice of the Debtor's bankruptcy, and may not have been served notice and the pleadings in this Motion that fundamentally affects its right as a Creditor in this case.

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

FN.1. This court has previously addressed this issue with multiple servicing agents the requirement that it accurately identify its status in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause for servicing companies (Green Tree Servicing, LLC, in the example highlighted by this footnote) has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly

contracting identified in the written contract.

Based on the foregoing, the valuation motion filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied.

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 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 Value is denied without prejudice.

16. 14-26488-C-13 KATHRYN CAMPAU
RJ-1 Richard L. Jare

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
7-14-14 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Value the Secured Claim of Santander Consumer USA Inc. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2013 Dodge Journey Automobile, with 32,000 miles. The Debtor seeks to value the property at a replacement value of $16,637.00 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 total dollar amount of the obligation represented by Santander Consumer USA Inc.'s, financing agreement is $22,537.00. The Debtor would like the deficiency to any allowed proof of claim to instead be allowed as an unsecured claim (unless already paid by the trustee as a secured claim).

The Motion states that the Debtors entered into the purchase agreement prior to March 3, 2013. The agreement is not dated, but March 3, 2013 was the due date for the first payment. Debtor acknowledges that while the loan has not seasoned for 910 days as of the petition date, the purchase transaction was a negative trade-in. Consequently, the Debtor asserts that the respondent's claim is subject to valuation at $16,637.00. The purchase agreement shows that the negative trade-in amount was -$6,900.

The Debtor's opinion of the collateral's replacement value is $15,270. However, since the Loan has seasoned only approximately 16 months,

the valuation sought by Debtor is $22,537.00 less the $6,900 negative trade-in at the time of purchase, "plus $1,000 which is the prorata amount the negative trade-in amount has been paid down by," for a valuation of $16,637. The debtor seeks a $5,900 reduction of the allowable secured claim.

Debtor states that the calculation factored in the petition date balance of $22,537.00 versus the $26,063.15 "Amount Financed." The "Amount Financed" has been paid down by $3527.15. Debtor states that the balance paid down since the inception of the contract; $2,527.15 is apportioned to the paydown of the Purchase Money Financing and $1,000.00 is apportioned to the pay down of the Negative Trade In.

DISCUSSION

The Debtor acknowledges that she has not established that underlying debt is not a purchase-money loan acquired within the 910-day period prior to the filing of the petition. The lien on the vehicle's title secures a loan incurred around the date of March 3, 2013, less than 910 days prior to filing of the petition, with a balance of approximately $22,537.00. This Motion cannot be granted, however, absent a showing that the lien on the vehicle's title secures a purchase-money loan was incurred more than 910 days prior to filing of the petition, and that the respondent's claim is under-collateralized

In response to this hurdle, Debtor appears to suggest that, since the loan has not "seasoned for 910 days" since the petition filing date (which confuses the court, because the purchase agreement will always have been filed around Marc 3, 2013, less than 910 days from the filing of the petition in June 20, 2014--the loan agreement secured by the lien on the vehicle will never have been incurred more than 910 days from that date), that the purchase transaction was a negative trade-in. Consequently, the Debtor argues that the respondent creditor's claim should be valued at $16,637.00.

Debtor may possibly be asserting that the inclusion of the funds that Debtor received for the negative trade-in value of the Debtor's old vehicle, a 2007 Dodge Nitro (Exhibit A, Dckt. No. 17 at 3), destroys the purchase money character of the loan from the creditor and the security interest given in connection with the transaction.

The hanging paragraph of 11 U.S.C. § 1325(a)(9) (hereinafter referred to as the "hanging paragraph"), prohibits the application of 11 U.S.C. § 506(a)(2) to its claim. The hanging paragraph provides that "section 506 shall not apply to a claim described in [11 U.S.C. § 1325(a)(5)] if the creditor has a purchase money security interest," the secured debt was incurred within 910 days of the filing of the petition, and the collateral is a motor vehicle acquired for the personal use of the Debtor.

However, the application of whether the hanging paragraph prevents the claim of creditor to be "stripped down" to the replacement value of the subject 2013 Dodge Journey, requires an inquiry into whether the creditor holds a purchase money security interest. The Debtor appears to be claiming that part of the financing of the purchase of the 2013 Dodge Journey came from the trade-in funds received for Debtor's trade-in of the 2007 Dodge Nitro, which generated $6,900 for the initial downpayment and the funds necessary to pay the loan secured by the 2013 Dodge Journey.

The Bankruptcy Code, however, includes no definition of the phrase, "purchase money security interest." The logical place to look for a definition is the nonbankruptcy law applicable to the contract between the parties.

Cal. Comm. Code § 9103 provides in relevant part:

> (a) In this section:
>
> > (1) "Purchase money collateral" means goods ... that secure[] a purchase money obligation incurred with respect to that collateral.
> >
> > (2) "Purchase money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or value given to enable the debtor to acquire rights in or use of the collateral if the value is in fact so used.
>
> (b) A security interest in goods is a purchase money security interest as follows:
>
> > (1) to the extent that the goods are purchase money collateral with respect to that security interest.

California's version of the Uniform Commercial Code ties the definition of a "purchase money security interest" to the definition of "purchase money security collateral," which in turn is dictated by the definition of "purchase money obligation." Not only is the "price" paid for the collateral a purchase money obligation, so is "value given to enable the debtor to acquire rights in" the collateral. The "value given to enable" language is broad enough to include the "negative equity" financed by the creditor that enabled the debtor to purchase the 2013 Dodge Journey.

When a car buyer offers to trade-in a vehicle as part of the purchase price for another vehicle, the charges incidental to transferring the trade-in vehicle are part of the purchase price of the new vehicle. Those charges are incurred to "enable the debtor to acquire rights in" the new vehicle. Therefore, when a lender, like the creditor in this case, finances the purchase of the new vehicle and, as part of the transaction also pays off an outstanding balance owed on the trade-in vehicle, the loan extended is a purchase money obligation of the buyer, the new vehicle is a purchase money collateral, and the lender's security interest is a purchase money security interest.

Thus, if the Debtor had borrowed money both to finance the new car and pay off the old car, but had not traded in the old vehicle to the seller, this court would conclude that the inclusion of the pay off amount in the loan would destroy its purchase money character. But here, the old vehicle was traded in to the seller as part of the value given to acquire the new vehicle.

Other California law supports the notion that financing negative equity owed on a vehicle traded in as part of the purchase of a new vehicle is considered part of the price paid for the new vehicle. Cal. Civil Code §

2981(e) provides:

> 'Cash price' means the amount for which the seller would sell and transfer to the buyer unqualified title to the motor vehicle described in the conditional sale contract, if the property were sold for cash at the seller's place of business on the date the contract is executed, and shall include taxes to the extent imposed on the cash sale and the cash price of accessories or services related to the sale, including, but not limited to, delivery, installation, alterations, modifications, improvements, document preparation fees, a service contract, a vehicle contract cancellation option agreement, and payment of a prior credit or lease balance remaining on the property being traded in.

In the context of auto sales, the value given to acquire a vehicle includes negative equity in a vehicle traded in as part of the purchase price of a new vehicle. Hence, a lender financing such a transaction acquires a purchase money security interest and the debtor incurs a corresponding purchase money obligation. Therefore, the hanging paragraph is applicable and the Debtor may not strip down the objecting creditor's secured claim to the value of the vehicle as of the date of the petition.

The lien on the vehicle's title secures a loan incurred around the date of March 3, 2013, less than 910 days prior to filing of the petition, with a balance of approximately $22,537.00. The subject debt is a purchase-money loan acquired within the 910-day period prior to the filing of the petition, and Debtor is statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a).

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 to Value is denied.

17. 11-48691-C-13 STEVEN/SUZAN POVEY MOTION TO MODIFY PLAN
PGM-7 Peter G. Macaluso 6-9-14 [111]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation of the Plan, however, on the following grounds:

1. Trustee is uncertain of the treatment proposed for creditor Carrington Mortgage. The creditor is included in Class 1 with a monthly contract installment amount of $1,952.42. The creditor is also included in Class 4 with the Debtors making the payment. The creditor was originally CitiMortgage, Inc., Claim No. 25, but was transferred per Dckt. No. 102.

2. The Trustee is uncertain of the Debtors' ability to make the payments required under 11 U.S.C. § 1325(a)(6). Debtors have not filed Amended Schedules I and J in support of the Motion. The most recent Schedules I and J filed were dated February 15, 2013, Dckt. No. 76. The Schedule I reflected the spouse was receiving $1,800.00 unemployment at the time.

3. The Debtors' loan modification has not been granted. Debtors' Plan is based upon a loan modification which has not been granted. Debtors' Motion to approve a loan modification, PGM-6, is set for hearing on July 22, 2014.

4. Debtors have added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of $6,702.00. The creditor has not filed a claim for post petition taxes, and only the creditor has the ability to do so under 11 U.S.C. § 1305.

5. Debtors incorrectly state in Section 1.01 that $114,365.78 is paid through May 20, 2014. This is actually the amount for June 3, 2014.

RESPONSE BY DEBTORS

Debtors respond to Trustee's first ground for objection to the plan that "the Trustee is correct." Citimortgage transferred the loan to Carrington Mortgage on December 4, 2013. The ongoing mortgage payment pursuant to the loan modification shall remain as a Class 1 Claim to be paid through the Chapter 13 Plan.

Debtors respond to Trustee's second point that the loan modification on which the plan relies has not been granted by stating simply, that "the proposed loan modification should be approved on July 22, 2014." At the July 22, 2014 hearing, however, this court denied the Debtors' Motion to Approve the Loan Modification, PGM-4, on the basis that the court was confused as to the identity of the lender. In the ruling on that Motion, the court noted that the Modification Agreement presented by the Debtors listed the "Lender" as "Carrington Mortgage Services, LLC" on the first page of the actual Home Affordable Modification Agreement (Dkt. 100), while Christiana Trust is listed as the claimant on the claims registrar the documents attached to Claim No. 25, however, refer to CitiMortgagr as the Creditor.

The court had previously entered an order approving the Trial Loan Modification on 804 Woburn Court, Vacaville, California between Debtors and CitiMortgage, yet the permanent loan modification papers for the same property that were executed between Debtors and Carrington Mortgage Services, LLC. Further muddling these circumstances was that a Notice of Mortgage Payment Change for the subject property, filed on June 26, 2014, by CitiMortgage, listed the creditor as "CitiMortgage, Inc. c/o Carringon Mortgage Services." Because the court remained perplex as to which entity was the subject creditor participating in the proceeding, the court denied the motion.

Debtors also respond to the Trustee's third reason for opposing the plan by stating that "[a] 11 U.S.C. 1305 claim is being processed by the Internal Revenue Service," so that presumably the Debtors will withdraw their claim. However, this response is vague as to the meaning of what Debtors will do with their placeholder claim.

In reply to Trustee's objection that the Debtors incorrectly state in Section 1.01 that $114,365.78 is paid through May 20, 2014 (which actually represents amount for June 3, 2014, Debtors make a request that this correction be incorporated into the order confirming.

The loan modification not having been approved by the court, the plan does not have sufficient monies to that claim in full, and the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Plan is not confirmed.

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

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

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

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

18.	13-31754-C-13 UST-2	VICTOR/SVETLANA PARSHIN Richard L. Jare	CONTINUED MOTION FOR THE COURT'S DETERMINATION OF THE REASONABLE VALUE OF THE SERVICES OF JEFFERY YAZEL 2-28-14 [64]

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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 28, 2014. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion for the Court's Determination of the Reasonable Value of the Services of Jeffrey Yazel has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The respondent creditor, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion for the Court's Determination of the Reasonable Value of the Services of Jeffrey Yazel. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This is a continued hearing on the motion of the United States Trustee (the "UST") for a determination of the reasonable value of the services performed by the debtors' former counsel in this case ("Prior Counsel"), and for an order directing Prior Counsel to disgorge the amount of payments received by him in excess of that reasonable value. By the time of the original hearing, Prior Counsel had filed a combined application for approval of compensation and response to the motion. The court issued a tentative ruling on the UST's motion indicating that in order to assess the motion, the court would need to rule on Prior Counsel's application for approval of compensation; however, Prior Counsel had failed to apply for approval of compensation in compliance with applicable rules.

In the tentative ruling, the court announced its intention to continue the hearing, stated that Prior Counsel would be required to file and serve a notice of continued hearing on his application for compensation, and essentially provided Prior Counsel with a roadmap for correcting the service and notice defects in his application for compensation. Prior Counsel did not appear at the original hearing on the UST's motion, and has not complied with the requirements set forth in the court's tentative ruling. That is, he has not filed or served a notice of continued hearing on his application for compensation.

Instead, on April 30, 2014, he filed a second application for compensation, together with a supporting declaration and a proof of service. Although the caption of the motion and declaration includes a hearing date

of June 11, 2014, Prior Counsel did not file a notice of hearing at all, as required by LBR 9014-1(d)(2). (For that reason, the application was not be set for hearing on June 11, 2014.) Further, the application, declaration, and proof of service ded not include a docket control number, as required by LBR 9014-1(c). The proof of service appears to be defective in that it states that service was made on March 19, 2014, whereas the documents purportedly served that day were not signed until April 22, 2014. Finally, despite the explicit cautions in the court's tentative ruling for the original hearing on the UST's motion, Prior Counsel failed to serve his second application for compensation on the party requesting special notice at DN 52 and failed to serve the creditors filing Claim Nos. 2, 3, 4, and 5 at the addresses on their proofs of claim. Also despite the explicit caution in that ruling, Prior Counsel served only one of the many unsecured creditors who have not filed proofs of claim.

The hearing on the UST's motion was continued once again, to July 23, 2014, at 10:00 a.m. Prior Counsel was directed to, by that date, obtain an order on a motion complying in all respects with applicable rules, including the federal bankruptcy rules and the court's local rules. If Prior Counsel does not comply, the court intends to grant the UST's motion in full and order Prior Counsel to disgorge all funds received for fees and costs, whether as a retainer or otherwise.

Prior Counsel filed a third application for compensation on May 21, 2014 (Dkt. 97). On July 29, 2014, the court entered an order denying Prior Counsel’s Motion for Compensation. The Motion was denied for several reasons. First, Prior Counsel failed to serve the debtors' attorney. Second, Prior Counsel failed to serve the creditor requesting special notice at DN 52 at its designated address, and failed to serve the creditors who filed Claim Nos. 2, 3, 4, and 5 at the addresses on their proofs of claim, as required by Fed. R. Bankr. P. 2002(g). Third, Prior Counsel served only one of the many entities listed as unsecured creditors on the debtors' Schedule F who have not filed proofs of claim, as required by Fed. R. Bankr. P. 2002(a)(6). Fourth, the proof of service incorrectly gives the service date as March 21, 2014, whereas the documents served were not signed and filed until May 21, 2014.

The court cannot locate an order on the docket concerning a Motion that complies in all respect with applicable rules and; therefore, the court will grant the US Trustee’s Motion in full and order Prior Counsel to disgorge all funds received for fees and costs, whether as a retainer or otherwise.

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 the Court’s Determination of the Reasonable Value of the Services of Jeffrey Yazel filed by the US Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for the Court's Determination of the Reasonable Value of the Services of Jeffrey Yazel is granted and Prior Counsel is directed to disgorge all funds received for fees and costs, whether as a retainer or otherwise.