

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 2, 2016 at 1:00 p.m.

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1. [12-25203](#)-B-13 DAVID/HEATHER RIGGS MOTION TO DISMISS CASE
 JPJ-2 Christian J. Younger 6-9-16 [[40](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

Subsequent to the filing of the Trustee's motion to dismiss case, the Debtors filed an amended plan on July 13, 2016, to resolve the issues raised in the Trustee's motion. The confirmation hearing for the amended plan is scheduled for August 23, 2016, at 1:00 p.m. The case is not dismissed.

The court shall enter an appropriate minute order.

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2. [11-43807](#)-B-13 AJESH/REETA KUMAR
JPJ-2 Peter G. Macaluso

MOTION TO DISMISS CASE
6-23-16 [[186](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

Subsequent to the filing of the Trustee's motion to dismiss case, the Debtors filed an amended plan on July 14, 2016, to resolve the issues raised in the Trustee's motion. The confirmation hearing for the amended plan is scheduled for August 23, 2016, at 1:00 p.m. The case is not dismissed.

The court shall enter an appropriate minute order.

3. [12-28917](#)-B-13 ALBERT WILSON MOTION TO DISMISS CASE
 JPJ-2 Peter L. Cianchetta 6-13-16 [[70](#)]

CONTINUED TO 9/06/16 AT 1:00 P.M.

Final Ruling: No appearance at the August 2, 2016, hearing is required.

4. [16-20018](#)-B-13 JOJIE GOOSELAU
JPJ-2 Peter G. Macaluso

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
6-20-16 [[45](#)]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not convert or dismiss this case

Subsequent to the filing of the Trustee's motion, the Debtors filed an amended plan on July 27, 2016, to resolve the issues raised in the Trustee's motion. The confirmation hearing for the amended plan is scheduled for September 13, 2016, at 1:00 p.m. The case is not converted or dismissed.

The court shall enter an appropriate minute order.

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

The court's decision is to not dismiss the case.

Although it does not appear that the Debtor has resolved the Trustee's objections regarding the filing of a certificate of completion from an approved nonprofit budget and credit counseling agency, the filing of a copy of tax returns for the most recent tax year a return was filed, and the filing of copies of evidence of income within the 60-day period prior to the filing of the petition, the pro se Debtor did appear at the July 21, 2016, meeting of creditors and this meeting was subsequently continued to August 4, 2016, at 8:30 a.m. Additionally, the Debtor has filed an amended plan on July 27, 2016, but it is unclear if the Debtor has properly served interested parties or when the confirmation hearing is scheduled.

The court shall enter an appropriate minute order.

6. [16-23333](#)-B-13 ALFONSO/CAMMIE MACIEL
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-27-16 [[27](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on June 22, 2016. While the delinquent installment was paid on June 30, 2016, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court shall enter an appropriate minute order.

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Trustee's Motion of Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the 28-days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted based on the following grounds.

First, the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation was heard and sustained on May 3, 2016. To date, the Debtor has not taken further action to confirm a plan in this case.

Second, since the Trustee's objection to the Debtor's claim of exemptions was sustained on May 24, 2016, there are no valid exemptions causing all of the Debtor's real and personal property to be non-exempt. Since there is \$1,043,193.00 in non-exempt assets, conversion to a Chapter 7 rather than dismissal is in the best interest of the estate pursuant to 11 U.S.C. § 1307(c).

Discussion

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since the Debtor has failed to take further action to confirm a plan and has non-exempt assets that can be liquidated in a Chapter 7 proceeding. The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate minute order.

8. [12-27542](#)-B-13 SEVERINO/CRISTINA ETORMA MOTION TO DISMISS CASE
JPJ-2 Melba Espartero-Cawit 6-13-16 [[53](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

Subsequent to the filing of the Trustee's motion to dismiss case, the Debtors filed an amended plan on June 20, 2016, to resolve the issues raised in the Trustee's motion. The confirmation hearing for the amended plan is scheduled for August 16, 2016, at 1:00 p.m. The case is not dismissed.

The court shall enter an appropriate minute order.

9. [16-23244](#)-B-13 CAMILO VILLEGAS
Marc A. Carpenter

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-23-16 [[14](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$9.00 installment when due on June 20, 2016. While the delinquent installment was paid on June 24, 2016, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court shall enter an appropriate minute order.

10. [16-22254](#)-B-13 ROSE RODRIGUEZ
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-15-16 [[47](#)]

DISMISSED: 06/29/2016

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The case was dismissed on June 29, 2016, due to the Debtor's failure to pay fees.

The court shall enter an appropriate minute order.

11. [15-25157](#)-B-13 ANDRES/CARMEN PEREZ
JPJ-2 Pauldeep Bains

MOTION TO DISMISS CASE
7-1-16 [[39](#)]

Tentative Ruling: The Trustee's Motion to Dismiss Case 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case provided that the Debtors have provided the Trustee with all required documents and as stated in their response. The documents requested are a copy of the Debtors' income tax return for the 2015 tax year, the Debtors' W-2 wage and tax statement for the year 2015, copies of bank account statements for February through May 2016, copies of payment advices for February through May 2016, any other information pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02 of the confirmed plan.

The court shall enter an appropriate minute order.

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' 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-BuTrk (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 decision is to dismiss the case.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$4,664.98, which represents 3.89 plan payments. An additional plan payment in the amount of \$1,200.00 was also due on June 25, 2016, and another in the amount of \$1,200.00 will be due on July 25, 2016.

Second, the Debtor has not prosecuted this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Debtor's motion to confirm amended plan was heard and denied on April 6, 2016. To date, the Debtor has not taken further action to confirm a plan in this case. The petition was filed on July 9, 2015, and has been pending for nearly a year with no confirmable plan.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate minute order.

13. [16-21598](#)-B-13 LEONARD RATHJEN
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-20-16 [[28](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due June 14, 2016. The court's docket reflects that the default was cured on June 20, 2016. Additionally, the Debtor paid the final installment of \$77.00 on July 7, 2016.

The court shall enter an appropriate minute order.

14. [16-22412](#)-B-13 DANIEL/EVE DINEEN
TAG-1 Ted A. Greene

MOTION TO CONFIRM PLAN
6-13-16 [[18](#)]

Thru #15

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan provided that the reduction to the monthly dividend for administrative fees is sufficient to cover the aggregate of claims and expenses as asserted by the Debtors in their response. The Debtors propose to reduce the monthly dividend for administrative fees from \$1,125.00 to \$523.00. This shall be provided for in the order confirming.

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

The court shall enter an appropriate minute order.

15. [16-22412](#)-B-13 DANIEL/EVE DINEEN
TAG-1 Ted A. Greene

COUNTER MOTION TO DISMISS CASE
7-14-16 [[35](#)]

Tentative Ruling: The motion will be denied provided that the plan is confirmable at Item #14.

If the plan proposed by the Debtors is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate minute order.

16. [16-20118](#)-B-13 LESTHER GASTELUM AND ALMA CONTINUED MOTION TO CONFIRM
PGM-1 SAQUELARES PLAN
Peter G. Macaluso 5-25-16 [[61](#)]

Tentative Ruling: The court issues no tentative ruling.

The Motion to Confirm Debtors' First Amended Plan Filed on May 25, 2016, has originally set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Trustee and a response was filed by the Debtors.

The matter will be determined at the scheduled hearing.

17. [15-26933](#)-B-13 PETE GARCIA
PGM-2 Peter G. Macaluso

OBJECTION TO CLAIM OF E*TRADE,
CLAIM NUMBER 5
6-6-16 [[75](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Debtor's Objection to the Claim of E*Trade Filed on January 13, 2016, Claim Number 5 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 5 of E*Trade and allow the claim as secured.

Pete Garcia ("Objector") requests that the court allow the claim of E*Trade ("Creditor"), Claim No. 5 as secured. The Creditor asserted its claim to be unsecured in the amount of \$62,604.75. Objector instead contends that the claim is secured due to the existence of a note and deed of trust on the real property commonly known as 2870 26th Avenue, Sacramento, California.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[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." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim should be allowed as secured and not unsecured. Documents attached to the proof of claim show that there is a note and deed of trust against the real property. The Creditor has not filed an objection. The Objector has satisfied its burden.

Based on the evidence before the court, the Creditor's claim is allowed as secured. The objection to the proof of claim is sustained.

The court shall enter an appropriate minute order.

18. [15-25534](#)-B-13 LAWRENCE/KAPRICE CRAWFORD MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 6-15-16 [[81](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on June 15, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 15, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

19. [11-27847](#)-B-13 TIMOTHY/LYDIA MANSOURI MOTION FOR HARDSHIP DISCHARGE
JHH-6 Judson H. Henry 7-5-16 [[142](#)]
Add on #42

Tentative Ruling: The court issues no tentative ruling but will entertain oral argument at the August 2, 2016, hearing.

The Debtors' Motion for Hardship Discharge [11 U.S.C. § 1328(b)] has been set for hearing on the 28-days 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).

This matter will be continued to August 16, 2016, at 1:00 p.m. at which time the court will issue its decision.

20. [16-23447](#)-B-13 RUBEN FRAGOSO AND LAURA MOTION TO VALUE COLLATERAL OF
SLE-1 MIRANDA BANK OF AMERICA, N.A.
Steele Lanphier 6-25-16 [[17](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

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

The court's decision is to value the secured claim of Bank of America, NA at \$0.00.

The motion to value filed by Debtors to value the secured claim of Bank of America, NA ("Creditor") is accompanied by the Debtor Ruben Fragoso's declaration. Debtor is the owner of the subject real property commonly known as 6614 Whitsett Drive, North Highlands, California ("Property"). Debtors seek to value the Property at a fair market value of \$165,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately \$215,883.00. Creditor's second deed of trust secures a claim with a balance of approximately \$33,897.00 based on the Debtors' petition. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate minute order.

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4 of Ditech Financial LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Ditech Financial LLC ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$47,352.35. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was February 3, 2016. Notice of Bankruptcy Filing and Deadlines, Dkt. 16. The Creditor's Proof of Claim was filed February 18, 2016.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

The court shall enter an appropriate minute order.

Final Ruling: No appearance at the August 2, 2016, hearing is required.

Debtors' Motion for Order Valuing 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 non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. at \$0.00.

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtor Domingo De La Serna's declaration. Debtors are the owners of the subject real property commonly known as 1575 Landmark Drive, Vallejo, California ("Property"). Debtors seek to value the Property at a fair market value of \$400,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7 filed by Wells Fargo Bank, N.A. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately \$376,998.21. A second deed of trust secures a claim with a balance of approximately \$90,679.56. Creditor's third deed of trust secures a claim with a balance of approximately \$69,719.91. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate minute order.

23. [13-21060](#)-B-13 DEWAYNE NICKEL
PGM-3 Peter G. Macaluso
Thru #25

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY
6-27-16 [[38](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

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

The court's decision is to grant the motion for compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Client since September 22, 2015, after substituting into this case from Hughes Financial Law. Debtor asserts that Hughes Financial Law had taken this case from the estate of John Tosney, who is now deceased and had received all initial fees paid in this case. Tosney had consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling \$4,000.00. Dkt. 16. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of \$1,200.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 41.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks confirmation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would have to file a modified plan. The plan modification was necessary to provide for the permanent loan modification. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court also recognizes that the Applicant has opted to seek allowance of additional fees of \$750.00 instead of \$1,230.00 for services rendered. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	\$750.00
Additional Costs and Expenses	\$ 0.00

The court shall enter an appropriate minute order.

24. [13-21060](#)-B-13 DEWAYNE NICKEL
PGM-1 Peter G. Macaluso

MOTION TO APPROVE LOAN
MODIFICATION
6-27-16 [[28](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Motion for Order Approving Loan Modification has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 1 of the plan filed January 27, 2013, and in Class 4 of the plan filed June 27, 2016, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,709.15 a month to \$1,250.55 a month. The Debtor was offered a permanent loan modification after successfully completing the trial period. The modification will include all amounts and arrearages that will be past due as of the modification effective date less any amounts paid to the Creditor but not previously credited to the Debtor's loan. The Debtor understands that by agreeing to add any unpaid amounts to the outstanding principal balance, the added unpaid amounts accrue interest based on the interest rate of 3.3750% in effect under the loan modification.

The motion is supported by the Declaration of Dewayne Nickel. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

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

The court shall enter an appropriate minute order.

25. [13-21060](#)-B-13 DEWAYNE NICKEL
PGM-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
6-27-16 [[33](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Motion to Modify Chapter13 Plan After Confirmation Filed on June 27, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir.

2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 27, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate minute order.

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Motion to Value Real Property Located at 8858 Statira Court, Elk Grove, California, has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Wells Fargo Bank at \$0.00.

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank ("Creditor") is accompanied by the Debtor Albert Munguia's declaration. Debtors are the owners of the subject real property commonly known as 8858 Statira Court, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of \$300,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately \$328,588.00. Creditor's second deed of trust secures a claim with a balance of approximately \$65,747.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

27. [16-24161](#)-B-13 ALONZO/NORMA MUNGUIA MOTION TO VALUE COLLATERAL OF
WSS-2 W. Steven Shumway BANK OF AMERICA
6-29-16 [[12](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Motion to Value Real Property Located at 8858 Statira Court, Elk Grove, California, has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Bank of America at \$0.00.

The motion to value filed by Debtors to value the secured claim of Bank of America ("Creditor") is accompanied by the Debtor Albert Munguia's declaration. Debtors are the owners of the subject real property commonly known as 8858 Statira Court, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of \$300,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim.

Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately \$328,588.00. A second deed of trust secures a claim with a balance of approximately \$65,747.00. Creditor's third deed of trust secures a claim with a balance of approximately \$65,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan provided that the Additional Provisions are removed from the plan as stated by the Debtors in their response. This will resolve the Trustee's objection that it cannot fully assess or effectively administer the plan. The Debtors shall provide for the removal of the Additional Provisions in the order confirming.

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

The court shall enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to deny the motion to extend automatic stay with prejudice.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 3 months. The Debtor's two prior bankruptcy cases were dismissed due to the incomplete filing of documents (case nos. 16-23014, 16-23743).

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(4)(B). The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

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).

The Debtor does not explain why the previous cases were filed nor why the instant case was filed. The court presumes, however, that the instant case was filed to prevent the foreclosure of Debtor's real property located at 15 Emporia Court, Elk Grove, California, since this case was filed the very same day as Carrington Mortgage Services, LLC's scheduled foreclosure sale set for July 13, 2016.

Nor has the Debtor sufficiently explained how her circumstances have substantially changed such that the present plan will succeed. The Debtor states that her present case differs from her two prior bankruptcy cases because she has now filed all required documents. However, the Debtor provides no substantial excuse for why she failed to provide all necessary documents in her previous cases. Indeed, the Debtor should be aware of the duties required of debtors in a Chapter 13 proceeding since the Debtor had filed for Chapter 13 relief on February 2, 2001, and received a discharge on October 29, 2004.

Although the Debtor asserts that she is in the midst of pursuing a loan modification with Carrington Mortgage Services, LLC, no evidence has been presented that the lender has consented to or is considering a loan modification.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied with prejudice and the automatic stay is not extended for all purposes and parties.

The court shall enter an appropriate minute order.

30. [10-53173](#)-B-13 ROY/ELIZABETH PEREZ
ADR-5 Justin K. Kuney

MOTION TO AVOID LIEN OF
BENEFICIAL CALIFORNIA INC.
7-18-16 [[81](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Beneficial California Inc. ("Creditor") against the Debtors' property commonly known as 1560 Malaga Court, Yuba City, California ("Property").

A judgment was entered against Debtor Roy Perez in favor of Creditor in the amount of \$18,396.65. An abstract of judgment was recorded with Sutter County on February 2, 2010, which encumbers the Property. All other liens recorded against the Property total \$358,583.14.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$254,500.00 as of the date of the petition.

Debtors' have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on Schedule C.

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

The court shall enter an appropriate minute order.

31. [14-25175](#)-B-13 JOHNNIE/KIMBERLY RHYNES MOTION TO MODIFY PLAN
SNM-6 Stephen N. Murphy 6-14-16 [[85](#)]

Tentative Ruling: The Motion to Confirm the Modified Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the following: "The Debtors have paid a total of \$4,450.00 to the Trustee through June 2016. Commencing July 25, 2016, monthly plan payments shall be \$250.00 for the remainder of the plan." And "Class 7 Creditors shall receive a dividend of no less than 1.39%."

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

32. [16-23189](#)-B-13 ANTHONY DAY OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 Peter G. Macaluso EXEMPTIONS
Thru #33 6-22-16 [[18](#)]

Tentative Ruling: The Objection to Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to overrule the objection and the exemptions are allowed.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). The court's review of the docket reveals that the spousal waiver has been filed. The Trustee's objection is overruled and the claimed exemptions are allowed.

The court shall enter an appropriate minute order.

33. [16-23189](#)-B-13 ANTHONY DAY CONTINUED OBJECTION TO
JPJ-1 Peter G. Macaluso CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
6-22-16 [[15](#)]

Tentative Ruling: The court issues no tentative ruling.

The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply was filed to the objection.

At the July 19, 2016, hearing, the Trustee represented that the issues raised in its objection were resolved. However, the Trustee stated on the record in open court that it objects to the voluntary retirement contributions listed at Line 41 of Form 122C-2. Dkt. 22. The matter was continued to allow the Debtor additional time to resolve the Trustee's issue. Nothing new has been filed.

The matter will be determined at the scheduled hearing.

34. [11-21890](#)-B-13 THUYLAN NGUYEN
JPJ-3 Michael David Croddy

OBJECTION TO DEBTORS 11 U.S.C.
SEC. 1328 CERTIFICATION BY JAN
P. JOHNSON
6-1-16 [[61](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Trustee's Objection to Debtor's Certifications and Entry of Discharge has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The objection is sustained and the Debtor is not entitled to a discharge.

The Trustee objects to Debtor's § 1328 certificate, which certifies eligibility for a Chapter 13 discharge because she has "not received a Discharge in a Chapter 7 . . . Bankruptcy case filed within four (4) years prior to filing this case." Dkt. 54. In fact, the Debtor did receive a Chapter 7 discharge in the prior four years preceding the filing of this bankruptcy case and is not entitled to a discharge in this case.

The Debtor has been contacted by the Trustee and has failed to amend the § 1328 certificate with the court.

For the foregoing reasons, the Debtor is not entitled to a discharge and the Clerk's office is not to enter a discharge in this case.

The court shall enter an appropriate minute order.

35. [16-22290](#)-B-13 JOSE PEREZ ORDER TO SHOW CAUSE - FAILURE
[Thru #38](#) Pro Se TO PAY FEES
6-16-16 [[34](#)]

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

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due June 13, 2016. The court's docket reflects that the default has not been cured. Moreover, the Debtor has failed to pay the installments due May 12, 2016, and July 11, 2016.

The court shall enter an appropriate minute order.

36. [16-22290](#)-B-13 JOSE PEREZ CONTINUED OBJECTION TO
JPJ-1 Pro Se CONFIRMATION OF PLAN BY JAN P.
JOHNSON
5-25-16 [[24](#)]

Tentative Ruling: The Continued Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The objection is overruled as moot, the case having been dismissed for reasons stated at Item #35.

The court shall enter an appropriate minute order.

37. [16-22290](#)-B-13 JOSE PEREZ CONTINUED ORDER TO SHOW CAUSE -
Pro Se FAILURE TO PAY FEES
5-17-16 [[18](#)]

Tentative Ruling: The Continued Order to Show cause is dismissed as moot, the case having been dismissed for reasons stated at Item #35.

The court shall enter an appropriate minute order.

38. [16-22290](#)-B-13 JOSE PEREZ CONTINUED MOTION TO DISMISS
JPJ-2 Pro Se CASE
5-25-16 [[27](#)]

Tentative Ruling: The Continued Trustee's Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is

considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is denied as moot, the case having been dismissed for reasons stated at Item #35.

The court shall enter an appropriate minute order.

39. [13-31095](#)-B-13 GEOFFREY GREITZER
JPJ-3 Douglas B. Jacobs

OBJECTION TO CLAIM OF
CALIFORNIA STATE DISBURSEMENT
UNIT/BUTTE COUNTY DEPARTMENT OF
CHILD SUPPORT SERVICES, CLAIM
NUMBER 10
6-8-16 [[160](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 10 of California State Disbursement Unit/Butte County Department of Child Support Services and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of California State Disbursement Unit/Butte County Department of Child Support Services ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$2,748.75. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a government unit was February 19, 2014. Notice of Bankruptcy Filing and Deadlines, Dkt. 17. The Creditor's Proof of Claim was filed May 19, 2016.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432.

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

The court shall enter an appropriate minute order.

40. [16-22995](#)-B-13 WALLEN YEP
JPJ-2 Jonathan D. Matthews

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
6-22-16 [[30](#)]

Final Ruling: No appearance at the August 2, 2016, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemption is disallowed.

The court shall enter an appropriate minute order.

41. [16-20587](#)-B-13 TERRY ARNOLD
JPJ-2 Scott D. Hughes

CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 13 TO CHAPTER
7 AND/OR MOTION TO DISMISS CASE
6-20-16 [[48](#)]

Tentative Ruling: This matter was continued from June 19, 2016, in order to heard in conjunction with Debtor's application to dismiss case. The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alterative Dismiss Case was originally set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to dismiss this case based on the Debtor's application to dismiss case filed July 11, 2016.

The court shall enter an appropriate minute order.

42. [11-27847](#)-B-13 TIMOTHY/LYDIA MANSOURI CONTINUED MOTION TO DISMISS
JPJ-2 Judson H. Henry CASE
Add on #19 7-7-16 [[146](#)]

Tentative Ruling: This matter was continued from July 26, 2016, to be heard in conjunction with the Debtors' motion for hardship at Item #19.

The Trustee's Motion to Dismiss Case was originally set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Nonetheless, the Debtors did file an opposition requesting that the matter be continued to August 2, 2016, to be heard in conjunction with their motion for hardship discharge.

The court's decision is to continue this matter to August 16, 2016, at 1:00 p.m. to be heard with Debtors' continued motion for hardship discharge.