

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

August 11, 2015 at 2:00 P.M.

1.	15-22302 -C-13	D JACK	OBJECTION TO DEBTOR'S CLAIM OF
	GLM-2	Mark Wolff	EXEMPTIONS
			7-6-15 [64]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 6, 2015. 28 days' notice is required. That requirement was met.

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

<p>The objection to claimed exemptions is sustained, and the exemptions are disallowed in their entirety.</p>
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Creditors James and Linda Hollaway object to the Debtor's use of two the California exemptions.

In his Amended Schedule C, Debtor claimed as exempt pursuant to CCP § 703.140(b)(5) "Funds held in trust account of attorney - such funds are subject to attorneys claim for fees, amount in trust is \$68,000 and attorneys fees secured by such funds total approximately \$60,000 - net value of funds in trust is \$8,000" and valued at \$8,000. Exhibit B, Dckt. 67.

Debtor is not entitled to exempt the \$8,000 in trust funds, which arise out of court and arbitration proceedings raised by movants for financial

abuse of elders. These proceedings culminated in an arbitration award and state court judgment in favor of movants in the amount of \$149,800.56. Before judgment was entered, the arbiter ordered the amount of \$68,922 to be held in a trust account pending final judgment. Thus, the amount of \$68,922 is incorporated into the final judgment of \$149,800.56 per the amended arbitration award. Exhibit G, Dckt 67. Debtor maintains that the \$68,922 was never movants'.

In his Amended Schedule C, Debtor claimed as exempt pursuant to CCP § 703.140(b)(5) "Possible community property interest in spouse's separate property, including Wife's real property (residence), regiment accounts (not property of estate), and household goods" and valued at \$5,000. Exhibit B, Dckt. 67.

As reflected in the court's Minute Order Sustaining Trustee's Objection to Confirmation of Plan, filed June 9, 2015, there still exists a number of uncertainties regarding Debtor's community property assets for which Debtor has failed to file documentation for to justify the claims made in Schedules B and C.

Discussion

The court's review of the evidence reveals that Debtor has no legal basis for claiming the exemptions at issue. The objection is sustained, and the claimed exemptions are disallowed.

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

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

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

IT IS ORDERED that Objection is sustained, and the claimed exemptions are disallowed in their entirety.

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

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

Below is the court's tentative ruling.

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

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

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors are \$9,075.76 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,537.88 is due on August 25, 2015. Debtors have paid \$0.00 into the plan to date.
2. The Plan will not complete within the required 60 months. The IRS filed a priority claim in the amount of \$142,437.40, and the plan recalculates the debt as \$13,741.
3. The plan does not appear to have been served along with the Motion to Confirm as required by the local rules.
4. Debtors' Form 22C are not properly filled out.

Discussion

As the Trustee's concerns highlight, the 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 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.

3. [15-25310](#)-C-13 SEAN TAYLOR AND MARY
TLA-1 MCCUBBIN
Thomas Amberg

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-14-15 [[14](#)]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 14, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 5617 Mingee Way, Elk Grove, California. The Debtors seek to value the property at a fair market value of \$340,000 as of the petition filing date. As the owners, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$351,421. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$71,500. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A.'s secured by a second deed of trust recorded against the real property commonly known as 5617 Mingee Way, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$340,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors are \$814 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$407 is due on August 25, 2015. Debtors have paid \$1,152 into the plan to date.
2. Section 2.07 fails to provide a monthly amount for the Trustee to pay the attorney fees of \$3,400.

Discussion

As the Trustee's concerns highlight, the 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 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.

5. [15-24912](#)-C-13 CHRISTOPHER/WENDY THOMAS
SS-1 Scott Shumaker

MOTION TO VALUE COLLATERAL OF
PORTFOLIO RECOVERY ASSOCIATES
7-24-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 24, 2015. Fourteen days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 Kia Optima. The Debtor seeks to value the property at a replacement value of \$2,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2007, more than 910 days prior to the filing of the petition, with a balance of approximately \$12,792.98. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$2,500. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy

Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Portfolio Recovery Associates secured by a purchase-money loan recorded against a 2006 Kia Optima is determined to be a secured claim in the amount of \$2,500, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the 2006 Kia Optima is \$2,500. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 24, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The hearing was originally set for July 21, 2015. The Chapter 13 Trustee and the Debtor filed a stipulation to continue the hearing on the Objection to is continued to August 11, 2015 at 2:00 p.m. Dckt. 25.

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. The plan relies on the Motion to Value Collateral of Green tree Servicing set for hearing on July 28, 2015.

3. The Debtor proposes to value the secured claim of Wells Fargo Bank on a 2011 Toyota Rav 4, but has failed to file a motion to value.
4. The plan will not complete in the required 60 months. Due to the priority secured claims of the IRS and Wells Fargo Bank, the plan will take 252 months to complete.

Discussion

The docket reflects that the court denied the Motion to Value Collateral of Green tree Servicing set for hearing on July 28, 2015. Dckt 33. The docket does not reflect a motion to value the collateral of Wells Fargo Bank.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtors provided only 40 days notice, rather than the 42 required.
2. The plan provides only \$7,862.66 for the IRS when the IRS filed a proof of claim in the amount \$37,826.66 filed by the IRS.

Creditor's Opposition

CashCall objects to the treatment of its claim as a Class 2 Secured Claim in the Debtors' Plan due to the termination of the automatic stay as to its collateral. On July 1, 2015, this Court entered an order granting CashCall relief from the automatic stay to enforce its rights against the Debtors' 2012 Chevrolet Impala ("Vehicle"). CashCall is informed and believes that the Debtors' Vehicle was repossessed on or about July 22, 2015.

Notwithstanding the foregoing, CashCall reserves the right to receive payment in the Debtors' plan as a general unsecured creditor for any unsecured deficiency claim following the liquidation of the Vehicle.

Discussion

As the Trustee's concerns highlight, the 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 24, 2015. Fourteen days' notice is required. That requirement was met.

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

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

1. Debtor did not appear at the First Meeting of Creditors held on July 2, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$251 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$251 is due on July 25, 2015. Debtor has paid \$0.00 into the plan to date.

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

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

holding that:

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

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

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

9. [15-24827](#)-C-13 EMERSON/VIRGINIA NONAN
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA
6-29-15 [[14](#)]

Also #10

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 29, 2015. Twenty-eight days' notice is required. This requirement was met.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.
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The motion is accompanied by the Debtor's declaration. The Debtors are the owner of the subject real property commonly known as 405 Amber Drive, Suisun City, California. The Debtors seek to value the property at a fair market value of \$319,000 as of the petition filing date. As the owners, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$391,253. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$27,843. Therefore, the respondent Creditor's claim secured by a junior deed of trust is completely under-collateralized. The Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 405 Amber Drive, Suisun City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$319,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

10. [15-24827](#)-C-13 EMERSON/VIRGINIA NONAN
MET-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL
6-29-15 [[19](#)]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 29, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Onemain Financial, "Creditor," is granted.
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The Motion filed by Emerson M. Nonan and Virginia T. Nonan ("Debtors") to value the secured claim of Onemain Financial ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2000 Toyota Sienna ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$3,150.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a non purchase-money loan incurred in 2013 with a balance of \$14,059 as of the petition filing date. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,150.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Emerson M. Nonan and Virginia T. Nonan ("Debtors") having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Onemain Financial ("Creditor") secured by an asset described as a 2000 Toyota Sienna ("Vehicle") is determined to be a secured claim in the amount of \$3,150, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$3,150 and is encumbered by liens securing claims which exceed the value of the asset.

11. [11-32430](#)-C-13 ROOSEVELT/RAULETTE
BLG-11 MCCLINTON
Paul Bains

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
6-1-15 [[155](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 1, 2015. 28 days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is denied.

The Motion to Approve Loan Modification filed by Debtor seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing ("Creditor") has agreed to a loan modification. The terms of the modified loan will be as follows:

Starting June 1, 2015 the interest rate will change to 3.37500%. The monthly principle and interest payment amount will be \$938.43 plus the estimated monthly escrow amount of \$378.71 (adjusts annually after 1 year) for a total monthly payment of \$1,317.14. The monthly Payment will begin July 1, 2015. The number of monthly payments will be 261 (maturity date of March 1, 2037). The new principle balance of the note will be \$481,589.54 of which \$234,589.54 will be deferred and treated as a non-interest bearing principle forbearance. The deferred principle balance is eligible for forgiveness provided there is no default on payments such that the equivalent of three monthly payments are due and unpaid on the last day of any month, on each of the first, second and third anniversaries of April 1, 2015, the Servicer

shall reduce the deferred principal balance in installments equal to one-third of the deferred principle reduction amount. Provided that all payments are made in accordance with the loan terms and the interest rate does not change for the entire loan term a balloon payment of \$153,284.26 will be due on March 1, 2037.

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

Trustee's Opposition

The Trustee does not oppose the terms of the loan modification. Rather, the Trustee is uncertain that the loan modification offeror is the holder of the existing note.

Wells Fargo Bank, N.A. filed Claim 2 indicating that it is the holder of the note. A Transfer of Claim Other than for Security was filed (Dckt. 104) transferring the claim to Wells Fargo Association, c/o Ocwen Loan Servicing, LLC with an attached Limited Power of Attorney allowing American Home Mortgage Servicing, Inc. with power over certain transactions (which does not appear to include loan modifications).

Discussion

The court is not prepared to approve the loan modification until the Trustee's concerns are addressed.

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 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 court does not authorize Roosevelt McClinton ("Debtor") to amend the terms of the loan with Ocwen Loan Servicing, which is secured by the real property commonly known as 1005 Blackspur Ct, Suisun City, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 155.

12. [15-24530](#)-C-13 REYNALDO/TERESITA SANCHEZ OBJECTION TO DISCHARGE BY DAVID
DPC-1 Gary Fraley P. CUSICK
6-18-15 [[14](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 18, 2015. 28 days' notice is required. That requirement was met.

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

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

SUMMARY OF MOTION

The Chapter 13 Trustee objects to discharge on the basis that Debtors are not eligible to receive a discharge because Debtor's received a Chapter 7 discharge during the four year period preceding the date of the order for relief in this case. 11 U.S.C. § 1328(f)(1). Debtors received a Chapter 7 discharge on March 26, 2015 (Case No. 14-32310). Debtors filed this Chapter 13 case on June 3, 2015.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(f)(1), Debtors are not entitled to a discharge in this Chapter 13 case because Debtors received a discharge in a Chapter 7 case filed during the four year period preceding the date of the order for relief in this case. The objection is sustained.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained, and upon successful completion of this case, the case shall be closed without entry of a discharge, and Debtor shall receive no discharge in case number 15-24530.

13. [15-24237](#)-C-13 LARRY/JENNIFER GASPER
MWB-1 Mark Briden

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK
7-2-15 [[21](#)]

Also #14

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 2, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 22192 Gasper Road, Bella Vista, California. The Debtor seeks to value the property at a fair market value of \$140,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$148,300. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$72,500. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 22192 Gasper Road, Bella Vista, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$140,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 15, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). Debtor also failed to provide profit and loss statements, bank account statements, proof of license, and insurance. This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. The plan proposes to surrender real property to the IRS. The Trustee received a fax from the IRS indicating concerns because the plan does not address any potential capital gains on the real property.

3. The plan may fail the liquidation analysis. Debtor proposes to surrender real property to the IRS where the Debtor also disputes the debt. If the Debtor does not owe the claim, the property equity may be available for unsecured claims. In the event of liquidation, unsecured creditors may also receive more based on the value of the property and whether any of the IRS claim is disallowed or subrogated.
4. Plan relies on pending motion to value the collateral of Wells Fargo Bank, N.A.
5. Debtors do not have sufficient disposable income to pay for mortgage expenses.

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

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

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

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

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

15. [15-24042](#)-C-13 MARK KNIGHT
DJC-1 Diana Cavanaugh

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-9-15 [[23](#)]

Also #16

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 9, 2015. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 835 Sheridan Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$190,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$192,135. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$11,803.04. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 835 Sheridan Street, Vallejo,, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$190,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the debtor, debtor's attorney, and Office of the United States Trustee on July 8, 2015. Twenty-eight days' notice is required.

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

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

1. The plan relies on a motion to value collateral of Wells Fargo Bank, N.A.

The court has granted the motion to value, thereby resolving the Trustee's only objection to confirmation. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on June 2, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

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

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted,
Debtors' Chapter 13 Plan filed on June 25, 2015 is
confirmed, and counsel for the Debtors shall
prepare an appropriate order confirming the Chapter
13 Plan, transmit the proposed order to the Chapter
13 Trustee for approval as to form, and if so
approved, the Chapter 13 Trustee will submit the
proposed order to the court.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

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

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

The Motion to Dismiss is granted and the case is dismissed.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor has not served the plan on all interested parties.
4. Debtor did not appear at the First Meeting of Creditors held on July 2, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
5. Debtor has three prior bankruptcy cases that were dismissed for failure to timely file documents and/or appear at the Meeting of Creditors.
6. Debtor is \$50 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$50 is due on July 25, 2015. Debtor has

paid \$0.00 into the plan to date.

As the Trustee's concerns demonstrate, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

19. [12-30049](#)-C-13 SONIA ZAMORA
PGM-4 Peter Macaluso
ATTORNEY
7-2-15 [[95](#)]

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 2, 2015. 28 days' notice is required. That requirement was met.

The Motion for Allowance of Professional 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 Motion for Allowance of Professional Fees is granted.
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Peter G. Macaluso, the Attorney for Debtors, ("Applicant") for Sonia M. Zamora, ("Client"), applies to the court for additional attorney's fees.

The period for which the fees are requested is for the period April 2014 through October 2015. Applicant requests fees in the amount of \$3,300.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. Applicant provides that Debtor's case was confirmed on September 10, 2012, and that the

modified plan and motions for loan modification were unanticipated. Applicant asserts that the plan modification was necessary to maintain the case after a motion to dismiss was filed by Chapter 13 Trustee, and Debtor received a loan modification.

The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

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

General Case Administration: approximately 0.8 hours. Applicant met with Client, communicated with Client, ensured timely plan payments.

Work done in connection with Motion to Dismiss: approximately 1.95. Applicant responded to Chapter 13 Trustee's Motion to Dismiss and appeared at hearings.

Work done in connection with Motion to Modify: approximately 4.35. Applicant filed a Motion to Modify, responded to opposition to the motion, appeared at hearings.

Work done in connection with Motion to Approve Loan Mod: approximately 5.05. Applicant filed a Motion to Approve Loan Modification, responded to opposition filed an amended Motion to Approve Loan Modification.

The total number of hours expended in this case for which applicant seeks compensation is 11 hours at a rate of \$300/hr.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case: Fees of \$3,300

The Chapter 13 Trustee filed a statement of nonopposition on July 27, 2015.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the fees in the amount of \$3,300 as a professional of the Estate.

Also #21

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

1. Debtors are delinquent in plan payment, and therefore appear unable to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$6,422 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$155,044 have become due. Debtors have paid a total of \$148,622 to Trustee with the last payment posted on July 9, 2015 in the amount of \$5,590.
2. Debtors' proposed modified plan will be complete in 66 months, exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d). The over-extension appears to be due to claims coming in higher than anticipated and due to Debtors current delinquency under the confirmed plan of \$19,558.

3. Trustee is uncertain of the attorney's fees proposed in section 2.06 of the proposed modified plan. Section 2.06 states that \$1,750 in attorney's fees was paid prior to the filing of the case, with \$1,750 to be paid through the plan. Attorney's fees pursuant to the April 21, 2013 order confirming are \$4,000 with \$1,750 paid prior to the filing of the case and \$2,250 paid through the plan. Trustee has disbursed \$2,250 in attorney's fees.
4. Debtors' modified plan proposes to increase plan payments from \$5,606 to \$6,006, a \$400 increase. Debtors' motion and declaration and supplemental declaration do not provide any information as to how Debtors will be able to afford increased payments, and debtors have not filed amended schedules I and J relevant to current budget.

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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 2, 2015. 28 days' notice is required. That requirement was met.

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

The court's decision is to grant the Motion to Dismiss

The Chapter 13 Trustee seeks dismissal of Debtors' case based on the following:

1. Debtors are \$13,936 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$5,606 is due on June 25, 2015. Debtor has paid \$143,032 into the plan to date

Debtors' opposition states that Debtors are in the process of modifying their plan and that the plan will be on filed with the court at least 7 days prior to the June 24, 2015 hearing.

June 24, 2015 Hearing

This matter came on calendar before the court on June 24, 2015. One day prior, Debtors filed a Motion to Confirm Modified Plan, Dckt. 60, and modified plan on June 23, 2015. At the hearing, the court ordered Debtors to file supplemental pleadings to the Motion to Confirm the Chapter 13 Plan, Dckt. Control No. CAH-2, and set a schedule for supplemental briefings to address the feasibility of the proposed modified plan.

DISCUSSION

As previously noted by Chapter 13 Trustee in Debtors' Motion to Confirm Modified Plan, on calendar the same days as hearing on this Motion to Dismiss, Debtors' proposed modified plan does not cure the delinquent payments upon

which this Motion to Dismiss is based. In fact, Debtors are delinquent \$6,422 under the terms of the proposed modified plan. Further, the proposed modified plan proposes to increase monthly payments by \$400 with no discussion as to how Debtors will be able to afford it, and the terms of the proposed modified plan appear to exceed the 60 month maximum for the life of the plan. The court having denied Debtors' Motion to Modify Plan, the court will grant the instant Motion to Dismiss.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted, and the Chapter 13 case is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

John Larry Debbs and Patsy Ruth Debbs ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 12-27110) was dismissed on July 16, 2015, after Debtor fell behind in plan payments. See Order, Bankr. E.D. Cal. No. 12-27110, Dckt. 46, July 16, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the

Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

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

Here, Debtors state that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. More specifically, Debtors state their intent to prosecute the instant case to the best of their ability. Debtors explain that they fell behind on plan payments in the previous case because Debtors' son became affected by the recent flooding in Texas. Debtors' son required financial assistance, which Debtors provided to him.

The Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

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

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

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 23, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION TO CONFIRM PLAN
PLC-8 IRMA CAMPOS 6-10-15 [[109](#)]
Peter Cianchetta

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 10, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Two oppositions have been filed with the court in response to this Motion to Confirm Plan.

CREDITOR'S OBJECTION

Creditor, Law Offices of Allan R. Frumkin, Inc., objects to Debtor's proposed plan on the following basis:

1. Section 2.15 of Debtor's plan lists total unsecured debts at \$2,900. However, unsecured creditors in this case have already filed claim for \$8,571.95. Creditors provides that claims are presumptively valid unless successfully objected to. Because there is no objection pending and the 45 days to object has passed, and because Debtor's plan proposes to pay 100% of non-priority general unsecured claims, Debtor's first amended plan does not comply with 11 U.S.C. § 1325(a)(1).
2. Section 6.02 of Debtor's plan attempts to bifurcate Trustee fees by paying Trustee 10% for some claims and 4.7% on others, impermissibly bifurcating Trustee's fees.
3. Section 2.06 of Debtor's plan attempts to pay attorney's fees totaling

\$7,000 in violation of the cap of \$4,000 for personal cases and \$6,000 in business cases.

4. Section 2.08 attempts to pay the second mortgage even though Debtor is showing that claim has no delinquency. Creditor objects to this creditor treatment, specifically because the amount paid to Trustee to administrate the claim detracts from the monthly payment to creditors in class 7.
5. Debtor's schedule F lists debts totaling \$2,900 and one debt as "unknown," raising the possibility that Debtor is not eligible for relief under 11 U.S.C. § 109(e).
6. Debtor's plan fails chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total \$37,349.65 and Debtor proposes to pay \$2,900 to unsecured creditors when claims filed by unsecured creditors at \$8,571.95, representing a 33.8% distribution. Failure to pay at least 100% of non-priority general unsecured claims or at least \$37,349.65 fails liquidation analysis.
7. Debtor does not demonstrate that he is able to make the required minimum plan payments. Based on the claims filed, the attorney's fees to be paid through the plan, the mortgage payments and arrears on the home, Creditor calculates the plan payment to be \$2,919.60 per month. However, Debtor has demonstrated that his disposable income is \$2,612.05. The plan is not feasible as required under 11 U.S.C. § 1325(a)(6).
8. Form 22c Means Test shows that Debtor's disposable income is \$2,437 per month. Creditor objects to non-priority general unsecured creditors receiving anything less than \$2,437 per month to non-priority general unsecured claims. Therefore, the plan is not in Debtor's best efforts under 11 U.S.C. § 1325(b).

TRUSTEE'S OBJECTION

Chapter 13 Trustee, David Cusick, objects to the proposed plan on the following basis:

1. Debtor's plan calls for payments of \$2,529.24 for one month, then \$2,612.05 for the remainder of the 60 month plan. Debtor is \$2,319.85 delinquent in plan payments to Trustee to date and the next scheduled payment of \$2,612.05 is due August 25, 2015. The plan cannot be confirmed under 11 U.S.C. § 1326(a)(2).
2. Section 2.06 of Debtor's plan lists attorney's fees paid of \$7,000. This exceeds \$6,000 for a business case under the fee guidelines.
3. Section 6 of the plan lists additional provisions that do not comply with applicable law. Debtor attempts to appropriate Trustee's fees on ongoing mortgage claims as 4.7% and on mortgage arrears and certain other claims as 10%.
4. Section 2.15 of the plan lists the total unsecured debts as \$2,900. Debtor's amended schedule F lists unsecured debts totaling \$13,317.93.

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

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

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

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

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

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 27, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [13-20972](#)-C-13 MARIE EUSTACHE
DPC-2 Brien Kelley

OBJECTION TO CLAIM OF BANK OF
AMERICA, N.A., CLAIM NUMBER
13-1
6-25-15 [[97](#)]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 26, 2015. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 13-1 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 13-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$206,136.60. Objector asserts that the proof of claim filed by Creditor was late-filed on July 14, 2014 where the bar date was June 5, 2013. Therefore, the claim should be disallowed.

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

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

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

holding that:

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

The Objection to Claim of Bank of America, N.A., Creditor filed in this case by Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 13-1 of Bank of America, N.A. is sustained and the claim is disallowed in its entirety.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on July 27, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Santander Consumer USA, Inc. ("Creditor") is granted and the secured claim is determined to have a value of \$6,197.
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The Motion filed by Ryan Richele Blake ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Suzuki SX4 LE Sedan ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,197 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in August 1, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,847. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,197. See 11 U.S.C. § 506(a). The valuation motion pursuant to

Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, Inc. ("Creditor") secured by an asset described 2011 Suzuki SX4 LE Sedan ("Vehicle") is determined to be a secured claim in the amount of \$6,197, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,197 and is encumbered by liens securing claims which exceed the value of the asset.

29. [12-34382](#)-C-13 FREDRICK/GENA MEIER
CYB-3 Candace Brooks

MOTION FOR COMPENSATION FOR
CANDACE Y. BROOKS, DEBTORS
ATTORNEY(S)
7-28-15 [[90](#)]

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 2, 2015. 28 days' notice is required. That requirement was met.

The Motion for Allowance of Professional 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 Motion for Allowance of Professional Fees is granted.
--

Candace Y. Brooks, the Attorney for Debtors, ("Applicant") for Fredrick Albin Meier and Gena Renee Meier, ("Client"), applies to the court for additional attorney's fees.

The period for which the fees are requested is for the period September 2013 through June 2014. Applicant requests fees in the amount of \$3,210.41.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits.

The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

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

The total number of hours expended in this case for which applicant seeks compensation is 11.67 hours at a rate of \$275/hr. The billed tasks include: general case administration, work done in connection with substituting in as attorney, work done in connection with modifying Client's plan, communicating with Client, work done in connection with a short sale.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case: Fees of \$3,210.41.

The Chapter 13 Trustee filed a statement of nonopposition on July 27, 2015.

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

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

The Motion for Allowance of Fees and Expenses filed by Candace Y. Brooks ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Candace Y. Brooks is allowed the fees in the amount of \$3,210.41 as a professional of the Estate.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

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

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

The Motion to Confirm the Amended Plan is granted.

Chapter 13 Trustee, David Cusick, has filed a motion of non-opposition (Dckt. 122), stating that although he had initial reservations as to the plan, he has resolved his concerns with Debtors and the operation of their business.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 20, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 28, 2015. Fourteen days' notice is required. That requirement was met.

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

The Motion to Amend Order to Sell Property is granted.

Arnulfo Arbarquez Salazar and Marra Vanessa Fernandez Salazar, Debtors, moves the court for an order amending a prior order granting Debtors' motion to sell a manufactured home described as a 2003 Oakwood bearing decal LBF7116 on leased property located at 4123 Annapolis Lane, North Highlands, California. Dckt. 94. In that order, the court granted Debtors' request to sell said property to Jackie Lee Swaim for \$48,000.

Debtors here move the court to amend the order to reflect changed terms of the sale to a new buyer, Jose Ortiz, for an offer of \$45,000, Dckt. 109, Exhibit 1.

The court has reviewed Debtors' motion and new offer from Jose Ortiz. The remaining terms of the sale that the court approved on June 18, 2015 are unaffected, and the court is satisfied that amending the order here is the appropriate court of action.

Based on the evidence before the court, the court determines that the amendment to the approved sale, Dckt. 94, is in the best interest of the Estate.

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

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

The Motion to Amend Order to Sell Property filed Arnulfo Salazar and Marra Salazar, Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that civil minute order granting Debtor's Motion to Sell Property is amended to reflect that the Buyer is Jose Ortiz for a purchase price of \$45,000, as reflected in Exhibit 1, Dckt. 109.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on Jun 9, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is uncertain of the plan payments proposed. Section 6.01 of the plan states that "Debtor has paid a total of \$60,532 as of May 13, 2015," while section 6.02 proposes plan payments of \$2,316 for months 1 through 26, then \$1,559 for months 27-60. Through May 13, 2015, Debtor has paid a total of \$60,532 to Trustee as state in section 6.01. But under section 6.02, for the same period of time, Debtor would have needed to pay a total of \$63,334. To date, under section 6.02, Debtor would have needed to pay Trustee \$63,893 resulting in a delinquency of \$4,118.
2. Trustee received a check from GM Financial in the amount of \$11,675.73 in payment of insurance proceeds received regarding Debtor's 2008 Dodge Ram 1500, which was totaled in an accident. The court issued a

civil minute order relative to Americredit Financial Services' Motion for Relief, Dckt. 136, where Trustee upon receipt of the insurance proceeds "shall make a disbursement to Creditor from the insurance proceeds in an amount equal to the unpaid balance of monies due Creditor under the confirmed plan." Trustee has disbursed those funds. However, Debtor's proposed plan does not incorporate these funds into the plan payment. Trustee would have no objection if the order confirming included an additional payment in month 31 of \$11,675.73.

DEBTOR'S RESPONSE

Debtor responds to Trustee's opposition to the instant motion. Debtor provides that:

1. Debtor agrees that the order confirming plan should include language that one additional payment of \$11,675.73 is to be made in month 31 of the plan.
2. Debtor requests that the order confirming plan include language satisfying Trustee's objection as to section 6.02 of the plan. It is undisputed that Debtor paid \$60,532 through May 13, 2015 as stated in section 6.01. Section 6.02 should be adjusted to state that the new payments start June 25, 2015 at \$1,559 per month. The plan remains at 100%.

DISCUSSION

Debtor and Trustee agree that the order confirming plan shall provide that in month 31 of the plan, a single payment of \$11,675.73 is to be made to the appropriate creditor. Further, Debtor has clarified Trustee's first objection as to the discrepancy between sections 6.01 and 6.02, and proposed that the clarification be memorialized in a further amendment to the plan in the order confirming plan. The order confirming the chapter 13 plan shall so provide.

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

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

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

The Motion to Confirm the 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 granted and the proposed Chapter 13 Plan filed on June 10, 2015 is confirmed. The order confirming chapter 13 plan shall include two provisions: first, a provision stating that in month 31, a single payment of \$11,675.73 shall be made to Americredit Financial Services; and second, a provision that section 6.02 shall reflect that new plan payments of \$1,559 per month will commence on June 25, 2015.

Also #33

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. 28 days' notice is required. This requirement was met.

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

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

SUMMARY OF MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$60,532 to date with the last payment received on March 20, 2015. Trustee shows a total of \$64,848 is due, thus Debtor is delinquent \$4,316 in plan payments. Prior to the hearing on this matter, a payment of \$2,316 will come due. As a result, Debtor will need to pay \$6,632 in order to bring the plan current as of the date of this hearing.

DEBTOR'S RESPONSE

Debtor provides that he has filed a modified plan and set it for hearing. Debtor states that he is modifying the plan because a secured vehicle accounted for in the plan was totaled in a car accident. Debtor's modified plan provides for the totaled vehicle as a surrender in Class 3 of the modified plan. Debtor is current on the terms of the modified plan.

June 24, 2015 HEARING

On hearing on June 24, 2015, the court noted that the docket reflected that on June 10, 2015, Debtor filed a modified plan, Dckt. 141, and motion

to confirm modified plan, Dckt. 130, with confirmation hearing set for July 28, 2015. The modified plan shows that Debtor has moved the secured claim of GM Financial into Class 3 of the plan, with an intent to surrender the collateral. Under the terms of the modified plan, Debtor appeared current on plan payments. The court continued the instant motion to take place concurrently with Debtor's Motion to Modify Plan.

DISCUSSION

The court has granted Debtor's Motion to Modify Plan, seemingly bringing Debtor current under the terms of the modified plan.

Cause does not exist to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

34. [15-25088](#)-C-13 DENISE LYNSTAD
LBG-1 Lucas Garcia

MOTION TO VALUE COLLATERAL OF
GM FINANCIAL
6-30-15 [[8](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 30, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Americredit Financial Services, Inc. dba GM Financial, "Creditor," is granted.
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The Motion filed by Denise Marie Lyngstad ("Debtor") to value the secured claim of GM Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Nissan Murano Sport Utility ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$5,795 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Debtor also relies on the Kelley Blue Book estimation, as well as her own personal knowledge as to the vehicle's condition, Exhibit 2, Dckt. 11.

The lien on the Vehicle's title secures a purchase-money loan incurred in February 1, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,493. Therefore, Debtor asserts that the Creditor's claim secured by a lien on the asset's title is under-collateralized.

CREDITOR'S OPPOSITION

Americredit Financial Services, Inc. dba GM Financial opposes Debtor's Motion to Value Collateral. Creditor asserts that Debtor has submitted to the court an incorrect valuation of the Vehicle—specifically, that the replacement value of the Vehicle is \$9,375 and not \$5,795 as stated by Debtor. Creditor relies upon the NADA Guidelines online report, Exhibit C, Dckt. 21.

Creditor further claims that the *NADA Guides* qualifies as a "market report" because it provides quotations for vehicles. Creditor also regularly relied on the *NADA Guides* in ascertaining values for vehicles in its business. Therefore, values from the *NADA Guides* are admissible as evidence for determining the replacement value of the Vehicle at issue.

Creditor requests this court to value the Vehicle at \$9,375.00, as reflected in the *NADA Guides*.

DEBTOR'S RESPONSE

Debtor disputes Creditor's valuation of the Vehicle. First, Debtor asserts that the Creditor's representative asserting the higher valuation has no personal knowledge of the Vehicle and has never inspected it. Declarant gives no background or credential verification as to her "expert opinion." Second, Debtor points out that NADA Guides report supplied by the Creditor is hearsay and lacks authentication.

Debtor provides that based on her own personal knowledge of her own vehicle, based on the vehicle's current condition, maintenance requirements, environment it is driven in, and particular defects, the original amount submitted (\$5,795) is the appropriate replacement value.

DISCUSSION

Consideration of the Evidence

Presumably Debtors' Declaration (Dckt. 25) provides the best testimony as to the owners' value of this vehicle. To that end, the Debtors provide the following testimony to be used by the court to value this vehicle:

- A. "[Debtor] believe and assert that the reasonable, fair-market value of [Vehicle] is \$5,795.00"
- B. Debtor has also considered the Kelly Blue Book Value stated for the Vehicle. Exhibit A is a copy of the Kelly Blue Book valuation which the Debtors assert in support of their valuation.
- C. Exhibit A is a copy of what has been identified as the Kelly Blue Book on-line valuation report. Exhibit B, Dckt. 11 lists a value of \$5,795 (fair condition).
- D. The condition terms are defined by Kelly Blue Book though those definitions are not provided as part of this exhibit. (Kelly Blue Book being a market report or quotation commonly used in the auto industry for vehicle valuations, Fed. R. Evid. 803(17), and routinely presented to this court, the court is very familiar with such terms and that they have

specific definitions used in stating such values.)

- E. The court notes that the Kelly Blue Book Report provided as Exhibit B shows the values for a "Private Party Sale," not for a retail merchant sale. Such retail merchant sales price is commonly higher.

Only when an opposition was filed do the Debtors provide any specific information as to the condition of the vehicle. Ms. Lyngstad declares that (1) living in a mountain environment has caused chipping in the paint and grill, and the dirty muddy environment has led to a great deal of fading of the paint, (2) the driver seat holding mechanism is breaking, causing the seat to shift unexpectedly during acceleration and deceleration, and (3) air conditioning and possibly heating issues. Declaration, Dckt. 24.

Creditor has provided the court with the NADA valuation, a competing market guide or report. The NADA lists the "Clean Retail" value (after adjusting for mileage) to be \$9,375.00. Creditor asserts that this is the correct retail merchant value for this Vehicle.

Both parties have provided the court with information concerning the vehicle, and both parties have withheld other information - condition of the vehicle, and credible evidence as to the costs related to the condition of this Vehicle. However, this shortcoming does not preclude the court from making a value determination.

The Debtors' evidence supports a value, as is in fair condition, of at least \$5,795. The Debtors have established that the vehicle is in generally fair but not good condition, as provided in Debtor's declaration. The Debtors have provided testimony that there is chipping in the paint and grill, and the dirty muddy environment has led to a great deal of fading of the paint, the driver seat holding mechanism is breaking, causing the seat to shift unexpectedly during acceleration and deceleration, and air conditioning and possibly heating issues. Though recognizing that Debtors did not provide this information until after the Opposition was filed, Creditor made no attempt to provide the court with the value of a repossessed eight model year old car, but to the "Clean Retail" car sitting on the dealer lot.

Creditor provides the court with evidence that the retail sale value, if the Debtor sought to replace the vehicle, is \$9,375, as set forth in the NADA Used Car Guide (which the court accepts as a guide used in the automobile industry for the determination of value of vehicle, in the same manner as the Kelley Blue Book). However, this does not take into account any of the repairs or work which must be made to the vehicle to get it to a "retail replacement value." On its face, the NADA valuation is for "Clean Retail" value. The "Rough Trade-In" Value is \$4,950.00 and the "Clean Trade-In" Value is \$6,850.00 stated in the NADA report provided by Creditor. Exhibit C, Dckt. 21. Creditor excludes from its exhibit the definition of these terms. From the evidence provided by Creditor, the court concludes that these values represent what the value of the vehicle without the necessary repairs to get it to the "retail replacement value."

Between Creditor providing no repair or condition information, unrealistically believing that the vehicle is in pristine retail sale value and the Debtor providing only general condition descriptions, the court makes its value determination based on the evidence provided. Given all of the time the parties have had to prepare declarations, the court believes

that the best evidence they could prepare (in light of the value of the vehicle and issues before the court) for the court.

The court concludes that the vehicle has a "retail replacement value," in its current condition to be \$6,300.00. This is computed by the court as follows: Clean Retail Value of \$9,375.00, less (\$825) for paint and body damage repairs, (\$525) for interior repairs, and (\$725) for air conditioning and heating repairs. Additionally, the court deducts a further \$1,000.00 for routine maintenance, cleaning, and preparation of a vehicle for retail merchant sale, and include: oil change, filters, engine cleaning, transmission fluid and filter replacements, interior detailing and cleaning, used condition of tires, and a tank of gas. With these adjustments, the NADA Report value would be reduced to \$6,300.00.

The court finds that the 2007 Nissan Murano Sport Utility which secures the claim of Americredit Financial Services, Inc. dba GM Financial to have a value of \$6,300.00. The lien on the Vehicle's title secures a purchase-money loan incurred in 2012, more than 910 days prior to filing of the petition, with a balance of approximately \$9,493.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$6,300.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted. The balance of the claim shall be paid as a general unsecured claim as provided in a confirmed bankruptcy 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.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Americredit Financial Services, Inc. dba GM Financial ("Creditor") secured by an asset described 2007 Nissan Murano Sport Utility ("Vehicle") is determined to be a secured claim in the amount of \$6,300, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,300 and is encumbered by liens securing claims which exceed the value of the asset.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 24, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the August 11, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 22, 2015. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.
