UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 15, 2017, at 3:00 p.m.

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1. 16-20602-E-13 SDH-5 | **THOMAS/SHANNON SHUMATE** **Scott Hughes** | **MOTION FOR COMPENSATION FOR SCOTT D. HUGHES, DEBTORS' ATTORNEY** **7-12-17 [73]**

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

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

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 12, 2017. By the court's calculation, 34 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has not been set properly for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Allowance of Professional Fees is denied without prejudice.

Scott Hughes, the Attorney ("Applicant") for Thomas Shumate and Shannon Shumate, the Chapter 13 Debtor ("Client"), makes a Request for the Additional Allowance of Fees and Expenses in this case.

Fees are requested for the period December 16, 2016, through June 28, 2017. Applicant requests fees in the amount of $1,800.00 and costs in the amount of $41.15.

Federal Rule of Bankruptcy Procedure 2002(a)(6) requires twenty-one days' notice of a hearing when the requested fees exceed $1,000.00. Local Bankruptcy Rule 9014-1(f)(1)(B) requires an additional fourteen days' notice for written opposition to be filed. That totals thirty-five days. Applicant provided thirty-four days' notice.

In light of there being only a one-day shortfall in the notice period, the court *sua sponte* shortens the time period for notice in this contested matter to thirty-four days.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 78. The Trustee notes that Applicant moves for additional fees at least partly because of preparing a modified plan and motion to confirm. The Trustee notes that no such plan and motion have been filed, however.

The attached invoice does not appear to include billing for the unfiled items, even though the Application mentions it, but the invoice does include $660.00 for e-mail correspondence between the Trustee and Client. *See* Exhibit B, Dckt. 76. In the Motion, the additional legal services are stated with particularity—pursuant to Federal Rule of Bankruptcy Procedure 9013—to be:

> "The specific work for which additional compensation is sought included the following: See Exhibit 'B.'"

Motion, p. 2:9–10; Dckt. 73.

Applicant then appears to try to combine a points and authorities with the Motion (a pleading that this court calls a "Mothorities"), in derogation of Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents. The motion, points and authorities, each declaration, and the exhibits (which may be combined into one exhibit documents) must be filed as separate documents.

In the Mothorities, Applicant states that the services provided and the benefit derived are:

A. "Counsel for the debtors has undertaken the following acts:"

1. "Prepared, filed and served a First Modified Plan"

2. "Prepared the Order confirming that plan with special language"

3. "Communicated with the debtors and the trustee regarding the trustee's multiple motions to dismiss"

4. "Appeared at a continued hearing on motion to dismiss with the debtor"

5. "Prepared Responses to Motions to Dismiss"

6. "worked with the trustee to make sure the delinquent payments were timely made and received by the trustee"

7. "Debtors' counsel also prepared this Fee Application."

Motion/Authorities, p. 6:7–14.

As pointed out by the Trustee, no First Modified Plan has been filed and no order confirming the plan with special language has been issued by the court. The Applicant is correct, the Trustee has filed multiple motions to dismiss, three within a seven-month period.

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). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). 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.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Reasonable Billing Judgment

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' Comm. 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 because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney 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?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

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

"No-Look" Fees

In this District, the Local Rules provide consumer counsel in Chapter 13 cases with an election for the allowance of fees in connection with the services required in obtaining confirmation of a plan and the services related thereto through the debtor obtaining a discharge. Local Bankruptcy Rule 2016-1 provides, in pertinent part,

(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
. . .
(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this

> fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys' fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 46. Applicant prepared the order confirming the Plan.

Lodestar Analysis

If Applicant believes that there has been substantial and unanticipated legal services that have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). The attorney may file a fee application, and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the lodestar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles Cty. Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of a professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437. Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate. *See In re Placide*, 459 B.R. at 73 (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant has not provided a task billing analysis to the court, but a review of the raw invoice data provided by Applicant, shows that there are two main categories.

Motion to Dismiss: Applicant spent 5.0 hours in this category. Applicant reviewed two motions to dismiss this case, communicated with Client and the Trustee, and appeared at a hearing.

Motion for Allowance of Substantial and Unanticipated Professional Fees: Applicant spent 1.0 hour in this category. Applicant prepared the instant Motion.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Scott Hughes, attorney	6.0	$300.00	$1,800.00
Total Fees for Period of Application			$1,800.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $41.15 pursuant to this application. The attached invoice states that the fees were incurred from December 14, 2015, through October 12, 2016. Exhibit B, Dckt. 76.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Postage and PACER		$41.15
		$0.00
		$0.00
		$0.00
Total Costs Requested in Application		$41.15

FEES AND COSTS & EXPENSES NOT ALLOWED—WITHOUT PREJUDICE

Fees

The unique facts surrounding the case, including handling two motions to dismiss the case, would usually raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. In the Motion, Applicant has not stated with particularity that the actions he took in this case were substantial and unanticipated above compensation provided by the no-look fee. Applicant never uses the words "substantial" and "unanticipated."

Instead, Applicant pleads that "[t]he initial agreed upon fee is not sufficient to fully compensate the attorney for legal services rendered." Dckt. 73 at 2:5.5–6.5. Simply arguing that the no-look fee is inadequate does not convince the court that additional fees should be awarded. The no-look fee system ensures that attorneys—on average—receive adequate compensation for their cases, including when some cases require more work than simpler cases.

The Local Bankruptcy Rules are set up to give consumer counsel a clear path by which to choose a compensation method. Some attorneys advanced the attitude that the "no-look" fees were just an "initial retainer" that would be increased if the no-look election was not financially favorable to consumer counsel. That required, and continues to require, the courts to carefully review fee applications and for consumer counsel to clearly request additional fees as permitted by the Local Bankruptcy Rules and Plan: They must be stated with particularity and documented to be both "substantial" and "unanticipated" legal services.

Additionally, Applicant's Declaration reflects information that is not true. Applicant states that he "had to modify the plan and successfully had it approved by the court." Dckt. 75 at 4:5.5. No modified plan has even been filed with the court, however. Applicant may have forgotten to delete irrelevant language from a template, but the court notes that he makes multiple references in the Declaration to a non-existent modified plan. In separate paragraphs, Applicant references a modified plan, such as "I did not anticipate that I would have to modify the plan," "Counsel . . . [p]repared, filed and served a First Modified Plan; Prepared the Order confirming that plan with special language," and "I have not charged for much of my time including multiple e-mails and the preparation and approval of the First Modified Plan." *Id.* at 4:11.5, 4:24–25, and 5:6.5–8.

Possibly it was intended that such work would be done to address the reasons that Debtor has defaulted, and now continues (a motion to dismiss is pending) to default in the required plan payments.

The court denies the fees and costs requested without prejudice.

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 Scott Hughes ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. **15-27905-E-13** **SALLY TOWN** **MOTION TO INCUR DEBT**
RJM-1 **Rick Morin** **7-28-17 [21]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 28, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing, ----------.

The Motion to Incur Debt is denied.

The Motion seeks permission to purchase a 2017 Honda Accord, which the total amount financed is $21,024.05, with monthly payments of $492.94 to Walnut Creek Honda over six years with an 18.95% annual interest rate.

The grounds stated with particularity in the Motion are that Debtor's lease of a Honda terminated, which vehicle she needs for transportation and that Debtor **Needs** to purchase **A New Vehicle**. Debtor has shopped, through a dealer, for financing to buyout the lease, but only one would provide financing.

In light of the inability to purchase her used vehicle, **Debtor** has **obtained** financing at **18.95%** to purchase a **New 2017 Honda**. Because Debtor has confirmed a 100% plan, the court should approve her obtaining **Credit** at **18.95%** to purchase a **New Vehicle**.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on August 1, 2017. Dckt. 26. The Trustee opposes the Motion on three grounds. First, he argues that the 18.95% interest rate is not in the best interest of creditors, and he is not convinced that Debtor has received enough offers (having visited one other car dealer).

Second, the Trustee cannot determine if Debtor will have any outstanding balance owing on the expired vehicle lease. Finally, the Trustee notes that Debtor is $1,340.00 delinquent in plan payments.

DISCUSSION

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

Here, the transaction is not best interest of Debtor. The loan calls for a substantial interest charge—18.95%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a new car and attempt to borrow money at an 18.95% interest rate.

Additionally, Debtor is already struggling in making the Plan payments, as evidenced by the Trustee reporting that Debtor is in default $1,340.00 (two months) in Plan payments. Opposition and Declaration, Dckts. 26 and 27.

Debtor has not shown the court that the 18.95% interest rate is reasonable. Such an interest rate appears to be a statement by the lender that it believes Debtor will default, that upon such default the creditor needs to pile on interest at 18.95% , and then after repossessing a car to sue Debtor, obtain a judgment, and then compound the 18.95% interest at 10% under the judgment.

Alternatively, if the lender believes that Debtor can "easily" pay the loan back, then the 18.95% appears to be an unreasonable interest rate intended to prey upon Debtor.

Debtor has not provided the court with any basis for concluding that a **New Car** is necessary. Debtor has not explained to the court what used cars, which have already suffered the rapid depreciation loss of a new car, have been considered, their cost, and Debtor's ability to obtain credit for such a car.

The Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied.

3. 17-24007-E-13 HLG-1 | **ANTHONY SIPPIO**
Kristy Hernandez | **MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.**
7-14-17 [12]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 14, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Anthony Sippio ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject

real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $442,689.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 26. The Trustee states that Creditor is included in Class 2 of the Plan with a claim of $84,565.00 and a value of $0.00. Additionally, Creditor is listed on Schedule D with a claim of $84,565.00, all unsecured. The Trustee notes that no secured claims have been filed in this case.

APPLICABLE LAW

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 4-1 filed by Wells Fargo Bank, N.A. appears to be the claim that may be the subject of the present Motion. The claim is listed as secured in the amount of $84,565.89.

Creditor has not filed any opposition to the Motion, though.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $494,240.00. Creditor's second deed of trust secures a claim with a balance of approximately $84,565.89. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, 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 to Value Secured Claim filed by Anthony Sippio ("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 Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 8472 Winterberry Drive, 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 $442,689.00 and is encumbered by a senior lien securing a claim in the amount of $494,240.00, which exceeds the value of the Property that is subject to Creditor's lien.

4. **17-24007-E-13** **ANTHONY SIPPIO** **MOTION TO VALUE COLLATERAL OF**
HLG-2 **Kristy Hernandez** **KEY BANK, N.A.**
7-14-17 [17]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 14, 2017. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Key Bank, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Anthony Sippio ("Debtor") to value the secured claim of Key Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $442,689.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 29. The Trustee notes that Creditor is included in Class 2 and also on Schedule D, with a wholly unsecured claim. He also states that no secured claims have been filed in this case.

CREDITOR'S RESPONSE

Creditor filed a Response on July 31, 2017. Dckt. 32. Creditor admits that it holds a third deed of trust to the Property and consents to unsecured treatment of its claim. Creditor requests that its lien be preserved until a plan is completed and Debtor receives a discharge, however.

APPLICABLE LAW

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $494,240.00. Creditor's third deed of trust secures a claim with a balance of approximately $34,229.31. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, 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 to Value Secured Claim filed by Anthony Sippio ("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 Key Bank, N.A. secured by a third in priority deed of trust recorded against the real property commonly known as 8472 Winterberry Drive, 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 $442,689.00 and is encumbered by a senior lien securing a claim in the amount of $494,240.00, which exceeds the value of the Property that is subject to Creditor's lien.

5. **17-22620-E-13** **JEANNIE REES** **MOTION TO VALUE COLLATERAL OF**
DEF-1 **David Foyil** **CITIMORTGAGE, INC**
6-21-17 [22]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 20, 2017. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Citimortgage, Inc. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Jeannie Rees ("Debtor") to value the secured claim of Citimortgage, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 14430 Bobbie Lane, Pioneer, California ("Property"). Debtor seeks to value the Property at a fair market value of $206,000.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 47. The Trustee notes that Class 2 of the Plan provides for Creditor, and Creditor is listed on Schedule D. He also notes that Ditech Financial LLC fka Green Tree Servicing LLC filed Claim 1-1 in this case, indicating that its $262,496.50 claim is secured by the Property.

APPLICABLE LAW

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued, and Creditor has not opposed the Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $262,496.50. Creditor's second deed of trust secures a claim with a balance of approximately $34,713.62. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, 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 to Value Secured Claim filed by Jeannie Rees ("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 Citimortgage, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 14430 Bobbie Lane, Pioneer, 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 $206,000.00 and is encumbered by a senior lien securing a claim in the amount of $262,496.50, which exceeds the value of the Property that is subject to Creditor's lien.

6. 17-22620-E-13 JEANNIE REES — MOTION TO CONFIRM PLAN
DEF-2 David Foyil — 6-21-17 [27]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient 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 June 21, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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).

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Confirm the Amended Plan is granted.

Jeannie Rees ("Debtor") seeks confirmation of the Amended Plan because he has moved to value the claim of Citimortgage, Inc., at $0.00. Dckt. 29. The Amended Plan proposes plan payments of $100.00, no claims listed in Class 1, one claim to b e valued in Class 2, $1,532.35 in Class 4, and a zero percent dividend to unsecured claims. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on July 28, 2017. Dckt. 44. A review of Debtor's Plan shows that it relies on the court valuing the secured claim of Citimortgage, Inc. The court has granted that motion, and the Trustee does not present any other ground for opposing confirmation of the Amended Plan.

The Amended Plan complies with 11 U.S.C. §§ 1322, 1323, 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 Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 21, 2017, is confirmed. Debtor's Counsel 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.

7.	**17-22021-E-13** **JGD-2**	**CYNTHIA WIGART** **John Downing**	**MOTION TO VALUE COLLATERAL OF WILMINGTON TRUST, N.A.** **8-1-17 [45]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient 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 August 1, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing, **----------**.

The Motion to Value Secured Claim of Wilmington Trust, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Cynthia Wigart ("Debtor") to value the secured claim of Wilmington Trust, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1694 Arapahoe Street, South Lake Tahoe, California ("Property"). Debtor seeks to value the Property at a fair market value of $265,000.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 4, 2017. Dckt. 50. The Trustee states that he does not oppose the Motion and notes that the creditor holding a first deed of trust filed a claim that is slightly higher (by $50.90).

APPLICABLE LAW

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $282,102.28. Creditor's second deed of trust secures a claim with a balance of approximately $78,803.76. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, the value of the collateral, 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 to Value Secured Claim filed by Cynthia Wigart ("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 Wilmington Trust, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 1694 Arapahoe Street, South Lake Tahoe, 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 $265,000.00 and is encumbered by a senior lien securing a claim in the amount of $282,102.28, which exceeds the value of the Property that is subject to Creditor's lien.

8. 17-22021-E-13 DPC-1 | **CYNTHIA WIGART** **John Downing** | **CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **5-9-17 [19]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on May 9, 2017. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). 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 Objection, 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 Objection.

The Objection to Confirmation of Plan is overruled.

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

A. Debtor is delinquent in plan payments.

B. Debtor may not be able to make plan payments or comply with the Plan.

C. Debtor's plan fails the Chapter 7 liquidation analysis.

D. Debtor fails to provide her full legal name on the petition.

The Trustee's objections are well-taken.

The Trustee asserts that Debtor is $135.00 delinquent in plan payments, which represents one month of the $135.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on a Motion to Value Collateral of Ocwen Loan Servicing. While Debtor has filed such a motion, it has been denied. The court has not been presented that Ocwen Loan Servicing, LLC is actually the creditor having a claim for which the court could exercise the federal judicial power. Debtor's plan does not have sufficient monies to pay the claim. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Debtor's plan fails the Chapter 7 liquidation analysis under 11 U.S.C. §1325(a)(4). Debtor's non-exempt equity totals $8,200.00, and Debtor is proposing a 1% dividend to unsecured claims, or approximately $1,080.00 to unsecured claims. Non-exempt assets include $7,800.00 from a Ford F350 and $400.00 from a snowblower.

Debtor failed to provide her full legal name on the petition filed on March 28, 2017. At the Meeting of Creditors held on May 4, 2017, Debtor's identification card listed the name Cynthia Christine Wigart. The petition lists Cynthia C. Wigart.

DEBTOR'S RESPONSE

Debtor filed a late Response on June 1, 2017. Dckt. 30. Debtor asserts that she is current on plan payments, that she has filed a motion to value secured claim, that she has amended Schedules A, B, and C, and that she has amended the petition to include her middle name.

JUNE 6, 2017 HEARING

At the hearing, the court discussed how it had not been presented with a real party in interest because Ocwen Loan Servicing, LLC, is known to provide third-party servicing work and not be the actual creditor. The court continued the hearing to 3:00 p.m. on June 27, 2017. Dckt. 34.

TRUSTEE'S STATUS UPDATE

The Trustee filed a Status Update on June 14, 2017. Dckt. 36. The Trustee states that the delinquency, liquidation analysis, and identity grounds have been resolved. All that remains is the Trustee's Objection relying upon the court granting a motion to value a secured claim.

JUNE 27, 2017 HEARING

At the hearing, the Trustee concurred with Debtor's request to continue the hearing while Debtor files a new motion to value. Dckt. 43. The court continued the matter to 3:00 p.m. on August 25, 2017.

DISCUSSION

The Trustee has acknowledged that three of his four grounds for objecting have been resolved. The final ground—that the Plan relies upon a motion to value secured claim—was heard and granted at the August 15, 2017 hearing.

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, and Debtor's Chapter 13 Plan filed on March 28, 2017, is confirmed. Counsel for 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.

9. **16-24326-E-13** **JESUS/MARIA RIVERA** **MOTION TO AVOID LIEN OF CREDIT**
TOG-1 **Thomas Gillis** **CONSULTING SERVICES, INC.**
7-5-17 [30]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, creditors, and Office of the United States Trustee on July 1, 2017. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Credit Consulting Services, Inc. ("Creditor") against property of Jesus Rivera and Maria Rivera ("Debtor") commonly known as 986 Emerald Vista Drive, Galt, California ("Property").

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 36. The Trustee notes that Wells Fargo Bank, N.A.—whose claim is the only one listed on Schedule D—filed Claim 2-1 for a secured claim of $196,691.62.

DISCUSSION

A judgment was entered against Debtor in favor of Creditor in the amount of $7,384.79. An abstract of judgment was recorded with Sacramento County on February 16, 2016, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $165,553.00 as of the date of the petition. Proof of Claim 2-1 is for the unavoidable consensual lien in the amount of $196,691.62 as of the commencement of this case that is stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $7,384.79 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 judgment lien of Credit Consulting Services, Inc., California Superior Court for Monterey County Case No. M132913, recorded on February 16, 2016, Book 20160216 and Page 1681, with the Sacramento County Recorder, against the real property commonly known as 986 Emerald Vista Drive, Galt, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

10. 17-24428-E-13 SDH-1 | **CHRIS CATALANO** Scott Hughes | **MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE 7-10-17 [9]**

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 10, 2017. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Secured Claim of Capital One Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $14,000.00.

The Motion filed by Chris Catalano ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Kia Sorrento ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $14,000.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 1, 2017. Dckt. 18. The Trustee states that he does not oppose the Motion, and he notes that Creditor filed a secured claim for $16,725.00.

APPLICABLE LAW

The lien on the Vehicle's title secures a purchase-money loan incurred on June 25, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,725.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $14,000.00, the value of the collateral. *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 to Value Secured Claim filed by Chris Catalano ("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 Capital One Auto Finance ("Creditor") secured by an asset described as 2014 Kia Sorrento ("Vehicle") is determined to be a secured claim in the amount of $14,000.00, 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 $14,000.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

11. 15-28234-E-13 GREGORY/OTHELLA JONES MOTION TO MODIFY PLAN
SNM-2 Stephen Murphy 6-27-17 [50]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(g) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Modified Plan is denied.

Gregory Jones and Othella Jones ("Debtor") seek confirmation of the Modified Plan because Mr. Jones retired for medical reasons in November 2016, which reduced household income and caused a plan default. Dckt. 52. The Modified Plan reduces plan payments to $1,159.59 in month eighteen and then increases payments to $6,215.00 in month twenty-one through the remainder of the Plan. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on July 26, 2017. Dckt. 64. The Trustee notes that the Plan proposes to change Class 2 dividends for months that have occurred already. He points out that month twenty-one is July 2017. The Trustee also notes that the Plan reduces attorney's fees paid through the Plan from $1,660.00 to "N/A," but the Trustee states that he has disbursed the $1,660.00 in attorney's fees already.

The Modified Plan proposes to change payments that have occurred already, whether they be plan payments or attorney's fees. The Modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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 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 Modified Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

12. **17-23835-E-13** **AARON WILLIAMS** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Mikalah Liviakis** **PLAN BY DAVID P. CUSICK**
7-11-17 [12]

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 11, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). 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 Objection, 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 Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Aaron Williams ("Debtor") revealed at the Meeting of Creditors that he has a reverse mortgage with Financial Freedom Mortgage, but that creditor is not listed on the schedules or the master list, meaning that all creditors have not been disclosed in this case.

B. A power of attorney filed in this case may not be valid because it is not notarized and is signed by only one witness.

The Trustee's objections are well-taken. Federal Rule of Bankruptcy Procedure 1007(a)(1) states that a debtor must identify all creditors to be listed on Schedule D. Here, Debtor omitted at least one creditor—Financial Freedom Mortgage. The court cannot confirm a plan under 11 U.S.C. § 1325(a) when the plan fails to comply with another provision, such as the Federal Rules of Bankruptcy Procedure.

California Probate Code § 4121 states the following regarding a power of attorney:

> A power of attorney is legally sufficient if all of the following requirements are satisfied:
>
> > (a) The power of attorney contains the date of its execution.
> >
> > (b) The power of attorney is signed either (1) by the principal or (2) in the principal's name by another adult in the principal's presence and at the principal's direction.
> >
> > (c) The power of attorney is either (1) acknowledged before a notary public or (2) signed by at least two witnesses who satisfy the requirements of Section 4122.

The power of attorney provided by the Trustee lists an execution date of October 1, 2015, and it is signed by the principal, Debtor Aaron Williams. Dckt. 15. The document is not notarized, however, and there is no signature on the line for "Signature of Second Witness." The power of attorney fails to satisfy all of the requirements under California law. Accordingly, Keysia Bell Warren does not have authority to prosecute this bankruptcy case on Debtor's behalf.

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 the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

13. **10-38840-E-13** **KENDRICK/NICOLE DUKES** **MOTION TO AVOID LIEN OF FIA**
BLG-3 **Chad Johnson** **CARD SERVICES, N.A.**
7-31-17 [83]

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient 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 31, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of FIA Card Services, N.A. ("Creditor") against property of Kendrick Dukes and Nicole Dukes ("Debtor") commonly known as 6419 Woodhills Way, Citrus Heights, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $11,006.08. An abstract of judgment was recorded with Sacramento County on July 9, 2010, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $275,000.00 as of the date of the petition. The unavoidable consensual liens that total $393,835.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 judgment lien of FIA Card Services, N.A., California Superior Court for Sacramento County Case No. 34-2009-00047650, recorded on July 9, 2010, Book 20100709 and Page 1389, with the Sacramento County Recorder, against the real property commonly known as 6419 Woodhills Way, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. 17-23740-E-13 DPC-1 | **ROBERT J/TENEKA JONES** **Peter Macaluso** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-11-17 [23]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 11, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). 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 Objection, 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 Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. The Plan will not complete within sixty months because the Internal Revenue Service filed a claim for a higher priority claim than expected (from $8,000.00 to $22,038.90), as well as listing $1,501.93 in unsecured debt.

B. Debtor cannot make plan payments because the Plan relies upon motions to value secured claims and because Schedules I and J are inconsistent.

The Trustee's objections are well-taken. Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in sixty-nine months due to the Internal Revenue Service filing a claim for a higher amount than anticipated. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

A review of Debtor's Plan shows that it relies on the court valuing the secured claims of Golden 1 Credit Union and Travis County Credit Union. Those motions are set for hearing on August 29, 2017. If that were the only ground for objecting to the Plan, then continuing this matter might be appropriate, but the Trustee has demonstrated that there are other problems preventing this Plan from being confirmed.

Finally, Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Schedule I lists combined monthly income of $4,284.34, but Schedule J lists $8,291.08. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

15. 17-23740-E-13 PGM-1 | **ROBERT J/TENEKA JONES** **Peter Macaluso** | **MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION** **7-10-17 [13]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Debtor having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Value Secured Claim was dismissed without prejudice, and the matter is removed from the calendar.**

16. **17-23740-E-13** **ROBERT J/TENEKA JONES** **MOTION TO VALUE COLLATERAL OF THE GOLDEN 1 CREDIT UNION**
PGM-2 **Peter Macaluso** **7-10-17 [18]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Debtor having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Value Secured Claim was dismissed without prejudice, and the matter is removed from the calendar.**

17. **17-23742-E-13** **CHRISTOPHER HANSON** **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 **Muoi Chea** **7-11-17 [27]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 15, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, and the matter is removed from the calendar.**

18. **17-24045-E-13** **PAULINE ABBOTT** **MOTION TO VALUE COLLATERAL OF**
HDR-1 **Harry Roth** **SIERRA CENTRAL CREDIT UNION**
7-7-17 [13]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 7, 2017. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of Sierra Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $9,595.27.

The Motion filed by Pauline Abbott ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Toyota Corolla ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $5,500.00 as of the petition filing date. As the owner, 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 14, 2017. Dckt. 18. Creditor opposes Debtor's valuation of $5,500.00 and asserts that the actual value of the Vehicle is $10,025.00, according to a Kelley Blue Book valuation report. *See* Exhibit B, Dckt. 20.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 1, 2017. Dckt. 22. The Trustee states that Debtor has not provided specific information about the Vehicle's style, but he does not oppose the Motion like Creditor does.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on March 20, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,595.27. Creditor has provided a Kelley Blue Book valuation report to counter Debtor's assertion of the Vehicle's value ($10,025.00 compared to $5,500.00).

In his Declaration, Debtor testifies that this 2010 vehicle had 103,600 miles on it when this case was filed. No other testimony is provided as to the condition of the Vehicle. The Kelley Blue Book valuation provided by Creditor is based on the Vehicle having 103,600 miles.

Creditor has sufficiently rebutted Debtor's assertion of value, and the court finds that the Vehicle's value is $10,025.00.

Therefore, Creditor's claim of $9,595.27 secured by a lien on the asset's title is fully-collateralized. Creditor's secured claim is determined to be in the amount of $9,595.27, the value listed in Proof of Claim No. 2-1. *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 to Value Secured Claim filed by Pauline Abbott ("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 Sierra Central Credit Union ("Creditor") secured by an asset described as 2010 Toyota Corolla ("Vehicle") is determined to be a secured claim in the amount of $9,595.27, 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 $10,025.00 and is encumbered by a lien securing a claim that does not exceed the value of the asset.

19. 16-24246-E-13 RICHARD CRUZ — CONTINUED MOTION TO CONFIRM PLAN
EWV-121 Eric Vandermey — 5-17-17 [127]

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

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

Sufficient 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 May 17, 2017. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion to Confirm the Amended Plan is denied.

Richard Cruz ("Debtor") seeks confirmation of the Amended Plan because Debtor mistakenly accounted for the income and expenses of his separated, non-filing spouse when Debtor submitted his original plan; Debtor has now provided the Chapter 13 Trustee with his 2015 and 2016 federal tax returns, and Debtor's Amended Plan seeks to adjust the priority debt claimed by creditors Department of Treasury, Internal Revenue Service, and California Franchise Tax Board; Debtor filed his original plan overlooking how to provide for certain secured debt held by creditors, including Green Tree Servicing LLC and Hilton Grand Vacations. Dckt. 127. The Amended Plan increases the monthly plan payment from $775.00 to $1,260.00. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an Opposition on June 23, 2017. Dckt. 133. The Trustee asserts that Debtor is $5,335.00 delinquent in plan payments, which represents multiple months of the plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

The Trustee asserts that the Amended Plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b) and that the Amended Plan may not be filed in good faith under 11 U.S.C. § 1325(a)(3). The Trustee raises the concern that the claims listed in Class 4 for Bank of the West (2004 Mastercraft Boat) and Bank of America (Camping Trailer) may not be debts of Debtor's business Master Tech Automotive and that Debtor may have more income than he is reporting. In addition, the Trustee asserts that it appears the claim for Bank of the West (2004 Mastercraft Boat) will be paid off in forty-nine months such that it may mature before the Plan will complete its term.

JULY 11, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 15, 2017, to allow Debtor time to sell property. Dckt. 136.

TRUSTEE'S SUPPLEMENT TO OPPOSITION

The Trustee filed a Supplement to his Opposition on July 18, 2017. Dckt. 137. The Trustee reports that Debtor is $5,820.00 delinquent under the proposed Amended Plan based upon the Plan calling for sixty payments of $1,260.00, which includes $15,120.00 paid so far. According to the Trustee's calculations, Debtor has paid only $9,300.00 to date.

The Trustee maintains his grounds for opposing confirmation.

RULING

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, 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 Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

20. 17-20551-E-13 TERRI CARTER — MOTION TO CONFIRM PLAN
MJD-1 Matthew DeCaminada — 6-27-17 [36]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 27, 2017. By the court's calculation, 49 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 25, 2017. Dckt. 46. The Trustee states that the Plan is feasible and that he does not oppose confirmation, but he informs the court that the Plan will complete in thirty-four months or less depending on whether he receives tax refunds in 2018 and 2019.

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

IT IS ORDERED that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 27, 2017, is confirmed. Debtor's Counsel 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.

21. 17-23252-E-13 MJD-1 | **STEVEN/STACI CAMILLUCCI** **Matthew DeCaminada** | **MOTION TO CONFIRM PLAN** **6-26-17 [21]**

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on June 26, 2017. By the court's calculation, 50 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed a Non-Opposition on June 29, 2017. Dckt. 29. The Amended 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 Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 26, 2017, is confirmed. Debtor's Counsel 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.

22. 17-23252-E-13 MJD-2 | **STEVEN/STACI CAMILLUCCI** **Matthew DeCaminada** | **MOTION TO EMPLOY REALTY ONE GROUP AS BROKER(S)** **7-28-17 [30]**

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Local Rule 9014-1(f)(2) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on July 28, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. Motions to employ professionals are commonly presented to the court by *ex parte* motion. Upon review of this Motion and supporting pleadings, the court is satisfied that this motion may be resolved *ex parte*.

The Motion to Employ is granted.

Steven Camillucci and Staci Camillucci ("Debtor") seek to employ Realty One Group Complete, ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of Broker to list and sell 383 Alpine Drive, Placer, California ("Property").

Debtor argues that Broker's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding a present offer to purchase the Property. Broker will receive a five percent commission from the total sales price of the Property.

Kiran Chhotu, a Real Estate Agent of Broker, testifies that she is licensed in California and is willing to sell the Property and receive a five percent commission. Ms. Chhotu testifies she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Realty One Group Complete as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 33. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Realty One Group Complete as Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 33.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

23. **17-24453-E-13** **MICHELLE QUINLIVAN** **MOTION TO VALUE COLLATERAL OF**
MWB-1 **Mark Briden** **PNC BANK**
7-12-17 [10]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Creditor, and Office of the United States Trustee on July 12, 2017. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The hearing on the Motion to Value Secured Claim is continued to 3:00 p.m. on September 19, 2017.

The Motion to Value filed by Michelle Quinlivan ("Debtor") to value the secured claim of PNC Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2685 Boneset Street, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $70,000.00 as of the petition filing date. As the owner, 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).

CREDITOR'S RESPONSE

Creditor filed a Response on July 28, 2017. Dckt. 22. Creditor opposes Debtor's valuation of the Property and states that it obtained a valuation on May 16, 2017, showing that the Property could be listed for $181,000.00 and sold for $179,000.00. Creditor states that if the court is not satisfied with the BPO valuation, then it requests that the hearing be continued for it to conduct a full appraisal.

APPLICABLE LAW

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

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

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

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

NO PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. No Proof of Claim has been filed by a creditor that appears to be for the claim to be valued.

BROKER'S PRICE OPINION NOT AUTHENTICATED

Creditor requests that the court deny the Motion based on the "evidence" in the form of a Broker's Price Opinion that is filed as Exhibit A, Dckt. 23. No declaration is filed in which the alleged broker provides any personal knowledge or expert testimony under penalty of perjury. FED. R. EVID. 601, 602, 701, 702. The court is merely presented with an exhibit that no person has authenticated, or may be willing to authenticate as required by Federal Rules of Evidence 901 and 902. The court declines the opportunity to make rulings based merely on factual arguments of counsel, no basis having been given for the Federal Rules of Evidence not applying to Creditor.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $73,367.00. Creditor's second deed of trust secures a claim with a balance of approximately $69,832.00.

If the court were to accept Debtor's valuation of the Property, Creditor's claim secured by a junior deed of trust would be completely under-collateralized. Creditor has demonstrated, though, that the Property's value may be as much as $179,000.00–181,000.00, which would provide at least some equity to support Creditor's secured claim. Creditor has requested time to conduct an appraisal, and the court concurs because this Motion depends upon an accurate valuation of the Property. The hearing on the Motion is continued to 3:00 p.m. on September 19, 2017.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Secured Claim filed by Michelle Quinlivan ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on September 19, 2017. Supplemental Opposition Pleadings shall be filed and served on or before September 5, 2017, and Replies, if any, filed and served on or before September 12, 2017.
>
> **IT IS FURTHER ORDERED** that Debtor shall serve copies of the Motion and Supporting Pleadings on David Cusick, the Trustee in this Chapter 13 Case, on or before August 22, 2017. (The Certificate of Service, Dckt. 13, states that these pleadings were served on Jan Johnson, another Chapter 13 Trustee.)

24. 17-23354-E-13 **CHIA CHOU** **MOTION TO VALUE COLLATERAL OF**
PGM-1 **Peter Macaluso** **UNITED GUARANTY CORPORATION**
7-5-17 [28]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Value Secured Claim having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

25. 17-23354-E-13 **CHIA CHOU** **MOTION TO VALUE COLLATERAL OF**
PGM-2 **Peter Macaluso** **CITIBANK, N.A.**
7-5-17 [33]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Value Secured Claim having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

26. **11-49259-E-13** **JOHN/THERESA ORIO** **MOTION TO AVOID LIEN OF CHASE BANK USA, N.A.**
PGM-1 **Peter Macaluso** **7-19-17 [53]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 19, 2017. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing, ----------.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Chase Bank USA, N.A. ("Creditor") against property of John Orio and Theresa Orio ("Debtor") commonly known as 1897 Pear Blossom Lane, Placerville, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $15,193.09. An abstract of judgment was recorded with El Dorado County on April 6, 2011, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition. The unavoidable consensual liens that total $401,600.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of $1.00 on Amended Schedule C. Dckt. 59.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 judgment lien of Chase Bank USA, N.A., California Superior Court for El Dorado County Case No. PCL20100652, recorded on April 6, 2011, Document No. 2011-0015747-00, with the El Dorado County Recorder, against the real property commonly known as 1897 Pear Blossom Lane, Placerville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

27. **17-23659-E-13** **FRANCISCO DOMINGUEZ** **OBJECTION TO CONFIRMATION OF**
DPC-1 **Thomas Gillis** **PLAN BY DAVID P. CUSICK**
7-11-17 [14]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Local Rule 9014-1(f)(2) Objection—No Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 11, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered. Debtor has filed a Non-Opposition to the Objection.

The Objection to Confirmation of Plan is sustained.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan fails the liquidation analysis.

DEBTOR'S NON-OPPOSITION

Francisco Dominguez ("Debtor") filed a Non-Opposition on August 8, 2017. Dckt. 18.

RULING

The Trustee's objection is well-taken. The Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor has reported non-exempt assets in the amount of $9,221.00, and Debtor is proposing a zero percent dividend to unsecured claims. Debtor has not explained how, under the proposed plan and the schedules filed under penalty of perjury, the unsecured claimants are entitled to a zero percent dividend when there may be upward of $9,221.00 in non-exempt assets.

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 the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

28. 17-23560-E-13 DPC-1 | **NICOLE MOSBY, Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 7-11-17 [20]**

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. 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)(C).

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) on July 11, 2017. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). 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 Objection, 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 Objection. At the hearing ----------.

The Objection to Confirmation of Plan is sustained.

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

A. Nicole Mosby ("Debtor") failed to appear at the Meeting of Creditors;

B. Tax returns and pay advices have not been provided;

C. Payments are not stated clearly in the additional provisions of the Plan;

D. The Plan will not complete within sixty months; and

E. Debtor cannot afford plan payments.

The Trustee's objections are well-taken. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Continued Meeting of Creditors was held on August 3, 2017, and the Trustee's Report indicates Debtor appeared, resolving that ground for objecting to the Plan.

Debtor has not provided the Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The additional provisions appear to call for a lump sum payment of $96,540.00 in the seventh month, but Debtor cannot afford that payment. 11 U.S.C. § 1325(a)(6).

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan's $1,400.00 monthly payment for the first six months is insufficient to pay Class 1 ongoing mortgage and arrears dividends, as well as the Trustee's fees. The payments should be $1,865.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Plan calls for increased plan payments, but Schedule J does not indicate an expected increase in income or reduction in expenses that would allow Debtor to pay more. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

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 the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

29. 17-23662-E-13 TOG-1 | **JOSE ESPINO AND MICHEL REYES** Thomas Gillis | **MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION 6-30-17 [16]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 30, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of Sierra Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $6,226.00.

The Motion filed by Jose Espino and Michel Reyes ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Pontiac G6 ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,424.00 as of the petition filing date. As the owner, 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 19, 2017. Dckt. 35. Creditor opposes Debtor's valuation of $2,424.00 and asserts that the actual value of the Vehicle is $6,226.00, according to a Kelley Blue Book valuation report. *See* Exhibit B, Dckt. 37.

TRUSTEE'S RESPONSES

David Cusick, the Chapter 13 Trustee, filed two Responses, one on July 28, 2017, and one on August 1, 2017. Dckts. 47 & 56. In the first Response, the Trustee notes that Class 2 of the Plan includes Creditor, who filed Claim No. 1-1 for a secured claim of $8,783.71 and asserting that the Vehicle's value is $6,226.00.

In the second Response, the Trustee notes that Debtor has not provided specific information about the Vehicle's style. The Trustee states that he does not oppose the Motion.

DISCUSSION

The lien on the Vehicle's title secures a loan incurred on January 22, 2015, which is less than 910 days (860) prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $8,783.71. Debtor Jose Espino states in his Declaration that the loan was not "made for the purchase of [the] vehicle" but was a title loan against the Vehicle. Dckt. 18.

Creditor has provided a Kelley Blue Book valuation report to counter Debtor's assertion of the Vehicle's value ($6,226.00 compared to $2,424.00). In his Declaration, Debtor testifies that the Vehicle has 119,000 miles on it. Debtor provides no other testimony as to the condition of the Vehicle.

The Kelley Blue Book valuation provided by Creditor is based on a vehicle with 119,000 miles, stating a retail value of $6,226.00. Creditor has sufficiently rebutted Debtor's assertion of value, and the court finds that the Vehicle's value is $6,226.00.

Therefore, Creditor's claim of $8,783.71 secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $6,226.00, the value of the collateral. *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 to Value Secured Claim filed by Jose Espino and Michel Reyes ("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 Sierra Central Credit Union ("Creditor") secured by an asset described as a 2008 Pontiac G6 ("Vehicle") is determined to be a secured claim in the amount of $6,226.00, 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 $6,226.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

30.	**17-23662-E-13 TOG-2**	**JOSE ESPINO AND MICHEL REYES** **Thomas Gillis**	**MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION** **6-30-17 [21]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 30, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of Sierra Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $19,844.00.

The Motion filed by Jose Espino and Michel Reyes ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 GMC Sierra ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $13,477.00 as of the petition filing date. As the owner, 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 19, 2017. Dckt. 39. Creditor opposes Debtor's valuation of $13,477.00 and asserts that the actual value of the Vehicle is $19,844.00, according to a Kelley Blue Book valuation report. *See* Exhibit B, Dckt. 41.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 50. The Trustee notes that the Plan provides for Creditor's claim in Class 2 and that Creditor filed a secured claim for $19,904.54.

DISCUSSION

The lien on the Vehicle's title secures a loan incurred on January 22, 2015, which is less than 910 days (860) prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,904.54. Debtor Jose Espino states in his Declaration that the loan was not "made for the purchase of [the] vehicle" but was a title loan against the Vehicle. Dckt. 23.

Creditor has provided a Kelley Blue Book valuation report to counter Debtor's assertion of the Vehicle's value ($19,844.00 compared to $13,477.00). In his Declaration, Debtor offers no testimony as to the condition of the Vehicle, any repairs that need to be made, or any deferred maintenance that the court should take into account in determining the "retail value" of this vehicle. Presumably, Debtor has concluded that the Vehicle is in showroom-ready condition, with nothing required for it to be sold at the retail sales price. (While this may seem unlikely, clearly Debtor would have provided such easily attainable information if such existed.)

Creditor has sufficiently rebutted Debtor's assertion of value, and the court finds that the Vehicle's value is $19,844.00.

Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $19,844.00, the value of the collateral. *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 to Value Secured Claim filed by Jose Espino and Michel Reyes ("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 Sierra Central Credit Union ("Creditor") secured by an asset described as 2008 GMC Sierra ("Vehicle") is determined to be a secured claim in the amount of $19,844.00, 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 $19,844.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

31.	**17-23662-E-13 TOG-3**	**JOSE ESPINO AND MICHEL REYES** **Thomas Gillis**	**MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION** **6-30-17 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 30, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of Sierra Central Credit Union ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $17,592.00.

The Motion filed by Jose Espino and Michel Reyes ("Debtor") to value the secured claim of Sierra Central Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Toyota Camry ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $11,567.00 as of the petition filing date. As the owner, 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).

CREDITOR'S OPPOSITION

Creditor filed an Opposition on July 19, 2017. Dckt. 31. Creditor opposes Debtor's valuation of $11,567.00 and asserts that the actual value of the Vehicle is $17,592.00, according to a Kelley Blue Book valuation report. *See* Exhibit B, Dckt. 33.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 28, 2017. Dckt. 53. The Trustee notes that Class 2 of the Plan provides for Creditor's claim and that Creditor filed a claim asserting a secured claim of $21,712.58.

DISCUSSION

The lien on the Vehicle's title secures a loan incurred on January 22, 2015, which is more than 910 days (860) prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,712.58. Debtor Jose Espino states in his Declaration that the loan was not "made for the purchase of [the] vehicle" but was a title loan against the Vehicle. Dckt. 28.

Creditor has provided a Kelley Blue Book valuation report to counter Debtor's assertion of the Vehicle's value ($17,592.00 compared to $11,567.00). In his Declaration, Debtor offers no testimony as to the condition of the Vehicle, any repairs that need to be made, or any deferred maintenance that the court should take into account in determining the "retail value" of this vehicle. Presumably, Debtor has concluded that the Vehicle is in showroom-ready condition, with nothing required for it to be sold at the retail sales price. (While this may seem unlikely, clearly Debtor would have provided such easily attainable information if such existed.)

Creditor has sufficiently rebutted Debtor's assertion of value, and the court finds that the Vehicle's value is $17,592.00.

Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $17,592.00, the value of the collateral. *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 to Value Secured Claim filed by Jose Espino and Michel Reyes ("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 Sierra Central Credit Union ("Creditor") secured by an asset described as a 2014 Toyota Camry ("Vehicle") is determined to be a secured claim in the amount of $17,592.00, 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 $17,592.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

32. 17-23464-E-13 MET-2 | **JOSEPHINE MELONE** / **Mary Ellen Terranella** | **CONTINUED MOTION TO VALUE COLLATERAL OF BOSCO CREDIT II, LLC TRUST SERIES 2010-1** **6-9-17 [25]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Continued Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on June 9, 2017. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 set a briefing schedule and set the matter for continued hearing on August 15, 2017.

The Motion to Value Secured Claim of Bosco Credit II, LLC Trust Series 2010-1 ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $59,572.01.

The Motion to Value filed by Josephine Melone ("Debtor") to value the secured claim of Bosco Credit II, LLC Trust Series 2010-1 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1049 Star Lilly Court, Vacaville, California ("Property"), which is rental property owned by Debtor. Debtor seeks to value the rental property at a fair

market value of $550,000.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a Non-Opposition on June 13, 2017. Dckt. 30.

CREDITOR'S OPPOSITION

Creditor filed an Opposition on June 20, 2017. Dckt. 38. Creditor notes that Debtor "significantly reduces the value of the Property based upon necessary repairs to the pool and pond." *Id.* at 3:15–16. Creditor states that it is owed $143,119.90, as of the petition filing date. Creditor opposes the Motion on the ground that it has not had an opportunity to conduct an appraisal, and Creditor requests that the court continue the hearing on the Motion approximately forty-five days to allow time for an appraisal to be conducted.

JUNE 27, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 15, 2017, to allow Creditor to conduct an appraisal and for parties to consider the economic reality of a second deed of trust position. Dckt. 44.

CREDITOR'S SUPPLEMENTAL OPPOSITION

Creditor filed a Supplemental Opposition on August 2, 2017. Dckt. 59. FN.1. Creditor states that it conducted an appraisal of the house, which concluded that the Property is worth $623,000.00.

FN.1. Creditor filed the Supplement Opposition and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny a party's requests. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Creditor also argues to the court that a debtor may not utilize 11 U.S.C. § 506(a) when another person is a form of joint owner for the property securing a claim to be valued. Dckt. 59 (citing *In re Rodriguez*, 156 B.R. 659, 660 (Bankr. E.D. Cal. 1993)). Creditor argues that Armando Leyva was the only person to execute the note for the Property, with Debtor not being part of that credit transaction.

APPLICABLE LAW

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

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

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

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

PROOF OF CLAIM FILED

The court has reviewed the Claims Registry for this bankruptcy case. Proof of Claim No. 2-1 appears to be the claim at stake.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $548,427.99, according to Proof of Claim 3-1. Creditor's second deed of trust secures a claim with a balance of approximately $143,119.90.

Determination That The Property Is Not Debtor's Principal Residence

In Creditor's related Objection to Confirmation, Creditor alleges that Debtor's plan impermissibly modifies its claim secured only by an interest in Debtor's primary residence in violation of 11 U.S.C. § 1322(b)(2). Dckt. 50.

On the Petition, Debtor states that she lives at 1740 Newark Lane, Suisun City, California. Dckt. 1. On the Statement of Financial Affairs, she also discloses that she lived at the Property from December 2005 to February 2015 and then moved to 2367 Main Street, Apt. 101, Ferndale, Washington, from February 2015 through May 2017. *Id.* That disclosure is consistent with Debtor's prior case, No. 14-29966, filed on October 6, 2014, in which she disclosed that she lived at the Property at the time of filing and also received rental income from it. Case No. 14-29966, Dckt. 1.

Debtor's Declaration with the Motion states that the Property is her rental property and has been since the filing of this case. Dckt. 27. What neither Creditor nor Debtor has addressed is the legal determination of when a property is deemed a debtor's primary residence—whether that time is upon signing a loan note, filing a bankruptcy case, or confirming a Chapter 13 plan. That determination could impact whether Debtor could move to value Creditor's secured claim under 11 U.S.C. § 506(a).

The Bankruptcy Appellate Panel for the Ninth Circuit has addressed the precise question of when to determine a debtor's principal residence for purposes of 11 U.S.C. § 1322(b)(2). *See Benafel v. One West Bank, FSB (In re Benafel)*, 461 B.R. 581 (B.A.P. 9th Cir. 2011). After studying trends in case law, the Bankruptcy Appellate Panel held that 11 U.S.C. § 1322(b)(2) should be analyzed using the petition date to determine a debtor's principal residence. *Id.* at 588.

The *Benafel* court summarized its research into the issue and concluded that using the petition date reflected the majority trend. *See id.* at 589–90 (citing *In re Christopherson*, 446 B.R. 831, 835 (Bankr. N.D. Ohio 2011); *In re Baker*, 398 B.R. 198, 203 (Bankr. N.D. Ohio 2008); *Wells Fargo Bank, N.A. v. Jordan (In re Jordan)*, 330 B.R. 857, 860 (Bankr. M.D. Ga. 2005); *In re Leigh*, 307 B.R. 324, 331 (Bankr. D. Mass. 2004); *In re Bosch*, 287 B.R. 222, 226 (Bankr. E.D. Mo. 2002); *In re Schultz*, No. 00-10581-JMD, 2001 Bankr. LEXIS 1319 (Bankr. D. N.H. July 12, 2001); *In re Larios*, 259 B.R. 675 (Bankr. N.D. Ill. 2001); *In re Donahue*, 221 B.R. 105, 111 (Bankr. D. Vt. 1998); *In re Howard*, 220 B.R. 716, 718 (Bankr. S.D. Ga. 1998); *In re Lebrun*, 185 B.R. 665 (Bankr. D. Mass. 1995); *In re Wetherbee*, 164 B.R. 212, 215 (Bankr. D. N.H. 1994); *In re Chruchill*, 150 B.R. 288, 289 (Bankr. D. Me. 1993); *In re Boisvert*, 156 B.R. 357, 359 (Bankr. D. Mass. 1993); *In re Dinsmore*, 141 B.R. 499, 505–06 (Bankr. W.D. Mich. 1992); *In re Amerson*, 143 B.R. 413, 416 (Bankr. S.D. Miss. 1992); *In re Groff*, 131 B.R. 703, 706 (Bankr. E.D. Wis. 1991)). Since *Benafel*, other courts have adopted the petition date as the appropriate to determine a debtor's principal residence. *See, e.g.*, *Utzman v. Suntrust Mortg., Inc.*, No. 15-cv-04299-RS, 2016 U.S. Dist. LEXIS 26341, at *26 (N.D. Cal. Mar. 1, 2016); *TD Bank, N.A. v. Landry (In re Landry)*, 479 B.R. 1, 7 (D. Mass. 2012); *In re Montiel*, No. 14-44784, 2017 Bankr. LEXIS 1797, at *8, 16 (Bankr. W.D. Wash. June 28, 2017); *In re Schayes*, 483 B.R. 209, 215 (Bankr. D. Ariz. 2012).

This court finds persuasive the petition date analysis as the appropriate date to determine whether the property at issue constitutes Debtor's principal residence for purposes of the 11 U.S.C. § 1332(b)(2).

Using that date, the court finds that Debtor's principal residence on May 22, 2017, was 1740 Newark Lane, Suisun City, California. The Property was not Debtor's principal residence on the petition date, which means that the anti-modification provisions of 11 U.S.C. § 1322(b)(2) do not apply to prevent Debtor from moving to value Creditor's claim against the Property under 11 U.S.C. § 506(a).

Creditor's Appraiser Is More Persuasive Than Debtor's Owner Valuation

While the court has Debtor's personal opinion of value for the Property being $500,000, the court finds the expert testimony presented by Creditor to be more persuasive—as a starting point. Laurie Hawes provides her testimony as a licensed real estate appraiser. Declaration, Dckt. 60. The testimony of an expert as to specialized knowledge, experience, and information is permitted to assist the finder of fact making the required factual findings. FED. R. EVID. 701, 702. The expert is not the "finder of fact" but assists the court as the actual "finder of fact."

Ms. Hawes's expert opinion is that the Property has a value of $623,000.00. Dckt. 60. Attached as Exhibit 2 to the Declaration is a detailed appraisal report (using the standard Uniform Residential Appraisal Report format). In the Report, Ms. Hawes provides six comparable properties, making adjustments for all the properties.

In her Declaration, Debtor makes a downward adjustment in her valuation of $25,000.00, testifying that: (1) the pool is cracked and needs to be replastered, (2) because it is a rental property Debtor needs to put a fence around the pool (but does not testify as to why that has not been previously done if it is "needed" for rental property), and (3) the pond must be removed because it is stagnant. Declaration ¶ 8, Dckt. 27.

In her Declaration, Ms. Hawes does not expressly address these specific repairs identified by Debtor. Ms. Hawes does not provide testimony as to the extent that she physically inspected the Property, limiting her testimony to a general "I observed and inspected the interior and exterior of the home . . . ." Declaration ¶ 11, Dckt. 60.

As part of her Appraisal Report, Ms. Hawes includes pictures of the Property (but does not testify that she took the pictures). There is one picture of the pool and one of the spa. While the pool appears to need a cleaning, the court cannot tell from the picture the extent of any of the asserted necessary replastering. Dckt. 60 at 24.

Ms. Hawes has included a picture of the pond, which appears to be a fetid body of water that needs to be cleaned. *Id.* at 25. The court cannot tell what needs to be "removed" in connection with the pond as testified to by Debtor in her Declaration.

In light of the direct testimony that repairs to the pool are necessary and that work must be done on the pond, and Ms. Hawes not clearly and expressly addressing such in her declaration and Appraisal Report, the court concludes that Ms. Hawes's valuation of $623,000.00 is more credible but that it needs to be adjusted for the repairs and cleaning testified to by Debtor. It appears that Debtor overstates what needs to be done, with the court concluding that a $15,000.00 downward adjustment is warranted.

The court determines that the Property has a value of $608,000.00 ($623,000–$15,000). Making the mathematical calculation based on a $608,000.00 value, the value of the Creditor's interest in the Debtor's interest in the collateral is computed as follows:

Gross Value of Property.....$608,000.00
Claim Secured by Senior Lien.....($548,427.99) Proof of Claim No. 3

Value of Creditor's Secured Claim.....$ 59,572.01

Debtor May Avail Herself of the Provisions of 11 U.S.C. § 506(a)

Creditor has argued that the Motion cannot be granted because of a 1993 decision in this court stating that a valuation motion cannot be granted when a joint tenant ownership is involved. That logic was addressed and resolved by the Bankruptcy Appellate Panel in 2001. *See Highland Fed. Bank v. Maynard (In re Maynard)*, 264 B.R. 209, 214–15 (B.A.P. 9th Cir. 2001). In that case, the appellant relied upon *In re Rodriguez* for the same proposition as Creditor here, but there, the court held that *In re Rodriguez* was distinguishable because the debtor entered the *Rodriguez* case with only a fractional interest that became part of the estate, as opposed to the case on appeal in which community property (which under 11 U.S.C. § 541(a)(2) brought all of the property into the estate) was not barred from valuation because of a non-debtor.

In this case, the deed of trust for the Property shows that it was held by Armando Leyva and Debtor as joint tenants. Additionally, Debtor disclosed in her petition that Mr. Leyva is deceased. While the Creditor chose to make the loan only to Armando Leyva, Creditor insisted on getting the grant of a security interest from Debtor. In effect, Creditor made a non-recourse loan with respect to Debtor and Debtor's interests in the Property.

Additionally, in alleging that Debtor is not the "sole owner" of the Property, Creditor appears to be misstating the facts. On Schedule A/B, Debtor states under penalty of perjury that she is the sole owner of the Property. Dckt. 1 at 11. On Schedule H, Debtor states under penalty of perjury that Armando Leyva was a co-debtor on an obligation, but that he is deceased. *Id.* at 27.

The Deed of Trust provided by Creditor, Exhibit B attached to the Supplemental Opposition (Dckt. 59 at 13), lists Debtor and Mr. Leyva as "joint tenants." Creditor offers no explanation as to how Mr. Leyva, if deceased as stated under penalty of perjury by Debtor, could continue to be a "joint tenant." The court also notes that Creditor has not provided a declaration or other method of authenticating Exhibit B as required by Federal Rules of Evidence 901 and 902.

It appears that Creditor (through the original lender from whom this obligation has been assigned) knew from day one that Debtor could be the owner of the property and that its obligation was subject to the bankruptcy laws of this country.

Creditor has not offered any counter-evidence to the statements under penalty of perjury that the joint tenant of the property identified in Creditor's deed of trust is deceased and that Debtor is the only remaining person having an interest in the Property.

RULING

Creditor's secured claim is determined to be in the amount of $59,572.01, the value of the collateral after the senior deed of trust, and therefore payments in the secured amount of the claim 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 to Value Secured Claim filed by Josephine Melone ("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 Bosco Credit II, LLC Trust Series 2010-1 secured by a second in priority deed of trust recorded against the real property commonly known as 1049 Star Lilly Court, Vacaville, California (rental property), is determined to be a secured claim in the amount of $59,572.01, 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 $608,000.00 and is encumbered by a senior lien securing a claim in the amount of $548,427.99, which does not exceed the value of the Property that is subject to Creditor's lien.

33. 17-23464-E-13 JOSEPHINE MELONE
Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT II TRUST SERIES 2010-1
7-10-17 [50]

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 10, 2017. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of 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). 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.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Objection to Confirmation of Plan is overruled as moot, the court having previously denied confirmation based on the objection of another creditor.

Bosco Credit II Trust Series 2010-1, Creditor with a secured claim, opposes confirmation of the Plan on the basis that:

A. The Plan impermissibly modifies Creditor's rights (11 U.S.C. § 1322(b)(2);

B. Josephine Malone ("Debtor") must make her residence available for appraisal (Local Bankruptcy Rule 2084-9(c); and

C. The Plan does not promptly and fully cure Creditor's pre-petition arrears (11 U.S.C. §§ 1322(d) & 1325(a)(5)(B)(ii).

A review of the docket shows that the court consider another creditor's objection to confirmation at the August 1, 2017 hearing and sustained that objection. Dckt. 64. The Plan that Creditor objects to is the same plan that has been denied confirmation already. Therefore, there is no active, confirmable plan for the court to consider related to this Objection. The Objection is overruled as moot.

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is overruled as moot, Wells Fargo Bank, N.A.'s Objection to Confirmation of the Plan having been sustained at the August 1, 2017 hearing and confirmation of the Plan previously denied.

34.	**12-30165-E-13 DBL-4**	**JOEL JEFFERSON AND BECKY MCDANIELS-JEFFERSON Bruce Dwiggins**	**MOTION TO SUBSTITUTE JOEL JEFFERSON AS A SUCCESSOR TO THE DECEASED CO-DEBTOR, FOR CONTINUED ADMINISTRATION OF THE CASE AND FOR WAIVER OF THE CERTIFICATION REQUIREMENTS FOR ENTRY OF DISCHARGE IN A CHAPTER 13 CASE 7-25-17 [67]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Substitute was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing, ----------.

The hearing on the Motion to Substitute is continued to 3:00 p.m. on August 29, 2017. Joint Debtor shall file and serve supplemental pleadings by August 22, 2017, and Replies, if any, may be presented orally at the continued hearing.

Joint Debtor, Joel Jefferson, seeks an order approving the motion to substitute Joint Debtor for the deceased Debtor, Becky Jefferson. This motion is being filed pursuant to Federal Rule of Bankruptcy Procedure 7025.

Joint Debtor and Deceased Debtor filed for relief under Chapter 13 on May 29, 2012. On October 4, 2012, Debtor's Chapter 13 Plan was confirmed. Dckt. 48. On January 28, 2017, Debtor Becky

Jefferson passed away. Joint Debtor has not asserted that he is the lawful successor and representative of Debtor.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 1, 2017. Dckt. 74. The Trustee notes that there is no evidence supporting the Motion because no declaration has been provided, and the Trustee is uncertain why only $10,000.00 in life insurance was received when two policies for Deceased Debtor were listed on Schedules B and C, one in the amount of $100,000.00 and the other for $50,000.00.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 incorporates Federal Rule of Civil Procedure 25, which provides that "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16th Edition, § 7025.02, which states:

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period

> does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004 . . . .**

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court of Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. LOCAL BANKR. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Showing That Administration is Feasible

Here, Joel Jefferson has not provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of Deceased Debtor. The Motion does not assert that Joint Debtor is the lawful successor or representative or that he will continue to administer the state on behalf of Deceased Debtor. In fact, Joint Debtor has not provided any testimony that he is capable of or willing to continue with administration of the Estate.

The funding of the Plan was with the income of the Joint Debtor, so from a cash flow basis, presumably such would be advanced as a reason that continued administration is feasible, but Joint Debtor does not address that point.

Life Insurance Assets

Additionally, the Motion discloses that $10,000.00 was "received" in life insurance proceeds, with the somewhat cryptic statement:

> "5. Acknowledgment that Co-Debtor had a life insurance policy through Debtor's employer, that has paid debtor $10,000.00 . This money has been used to pay funeral and medical bills and is exhausted."

Motion ¶ 5, Dckt. 67. But, as the Trustee notes, Schedule B indicates that there are a number of insurance policies that do not identify the beneficiaries. Dckt. 1 at 14–15. On Schedule C, an exemption is claimed in the insurance policies pursuant to California Code of Civil Procedure § 703.140(b)(7), which allows an exemption of "(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract." The Trustee has not addressed what portion in excess of the above may be claimed as exempt.

In light of the loss to Joint Debtor and his family, the court seeks to expedite this review process. The court continues the hearing to August 29, 2017, to allow for supplemental pleading. If, after review, the Chapter 13 Trustee believes his opposition has been resolved, these parties may lodge with the court a proposed order granting the Motion, with one exception. The court does not waive the required certifications, which can and should be made by the personal representative. The court will waive any post-petition education requirement for the Deceased Debtor, which has not been satisfied as of this time.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion to Substitute is continued to 3:00 p.m. on August 29, 2017. Joint Debtor shall file and serve supplemental pleadings addressing the Trustee's Opposition by August 22, 2017, and Replies, if any, may be presented orally at the continued hearing.
>
> If, after, review the Chapter 13 Trustee believes his opposition has been resolved, these parties may lodge with the court a proposed order granting the Motion, with one exception. The court does not waive the required certifications, which can and should be made by the personal representative. The court will waive any post-petition education requirement for the Deceased Debtor, which has not been satisfied as of this time. If the court is satisfied based on the supplemental pleadings or review of the Motion with the opposition withdrawn, the court ***may*** issue the order and remove the matter from the continued calendar date.

35. 11-29166-E-13 WW-6 | **MICHAEL/JENNIFER PETERS** **Mark Wolff** | **CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE 4-25-17 [152]**

Final Ruling: No appearance at the August 15, 2017 hearing is required.

Local Rule 9014-1(f)(2) Motion—Continued Hearing

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on April 25, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 set a briefing schedule and final hearing.

The hearing on the Objection to Notice of Mortgage Payment Change is continued to 3:00 p.m. on August 29, 2017.

Michael Peters and Jennifer Peters ("Debtor") object to a Notice of Mortgage Payment Change filed by MTGLQ Investors LP ("Creditor") on March 1, 2017. Debtor alleges that creditor violated Federal Rule of Bankruptcy Procedure 3002.1(c) by failing to file and serve Debtor, Debtor's attorney, and David Cusick (the Chapter 13 Trustee), with a notice itemizing all fees, expenses, and charges.

Debtor requests that the court, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(i):

A. Preclude Creditor from presenting omitted information as evidence;

B. Determine that payment of the fees, costs, and expenses allegedly incurred in the past 180 days are not required by the underlying agreement and applicable bankruptcy law to cure a default or to maintain payments in accordance with 11 U.S.C. § 1322(b)(5);

C. Require Creditor to pay Debtor's incurred attorney's fees; and

D. Award sanctions to Debtor and against Creditor and Rushmore Loan Management Services.

Summary of Debtor's Objection

Debtor argues that Creditor has collected, or charged Debtor for, fees, costs, or expenses after December 1, 2011, without giving notice. A review of the docket shows that Creditor has not filed any

Notice of Fees, Expenses, and Charges since December 1, 2011. Nevertheless, Debtor has asserted—and attached as Exhibit A—that Creditor has charged for various fees, including:

1/20/16	Property Preservation DI	$96.00
1/22/16	Property Preservation DI	$55.00
1/22/16	Property Preservation DI	$15.00
1/22/16	Property Preservation DI	$1.50
2/9/16	Property Preservation DI	$10.50
2/24/16	Property Preservation DI	$15.00
2/24/[16]	Property Preservation DI	$1.50
3/8/16	Misc Corporate Disbursem	$1.18
3/16/16	Misc Corporate Disbursem	$1.18
3/25/16	Property Preservation DI	$1.50
3/25/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$15.00
4/28/16	Property Preservation DI	$1.50
5/5/16	Misc Corporate Disbursem	$1.18
5/20/16	Property Preservation DI	$15.00
5/20/16	Property Preservation DI	$1.50
5/24/16	Misc Corporate Disbursem	$1.18
5/31/16	Misc Repayment	$109.00
6/2/16	Misc Corporate Disbursem	$1.18
6/23/16	Property Preservation DI	$1.50
6/23/16	Property Preservation DI	$15.00
6/27/16	Misc Corporate Disbursem	$1.18
7/7/16	Misc Corporate Disbursem	$1.18
7/8/16	Misc Repayment	$1.18
7/15/16	Attorney Advance Disburs	$215.00
7/25/16	Misc Corporate Disbursem	$1.18

7/25/16	Property Preservation DI	$55.00
7/27/16	Property Preservation DI	$96.00
7/27/16	Property Preservation DI	$15.00
7/27/16	Property Preservation DI	$1.50
8/1/16	Property Preservation DI	$10.50
8/2/16	Escrow Advance	$10,859.60
8/10/16	Misc Corporate Disbursem	$1.18
8/10/16	Misc Corporate Disbursem	$0.29
8/29/16	Property Preservation DI	$15.00
8/29/16	Property Preservation DI	$1.50
9/6/16	Misc Corporate Disbursem	$1.18
9/26/16	Property Preservation DI	$15.00
9/26/16	Property Preservation DI	$1.50
9/29/16	Corporate Advance Disbursem	$1.18
10/26/16	Corporate Advance Disbursem	$1.18
10/26/16	Property Preservation DI	$15.00
10/26/16	Property Preservation DI	$1.50
10/31/16	Misc Corporate Disbursem	$1.18
11/1/16	Misc Corporate Disbursem	$0.79
11/23/16	Property Preservation DI	$15.00
11/23/16	Property Preservation DI	$1.50
11/29/16	Misc Corporate Disbursem	$1.18
12/1/16	Escrow Advance	$2,443.05
12/7/16	Misc Corporate Disbursem	$0.63
12/30/16	Property Preservation DI	$1.50
12/30/16	Property Preservation DI	$15.00
5/6/15	Corp. Advance Adjustment	$5,327.95
5/27/15	Property Preservation	$1.50

5/27/15	Property Preservation	$15.00
6/26/15	Property Preservation	$15.00
6/26/15	Property Preservation	$1.50
7/16/15	Property Preservation	$96.00
7/28/15	Attorney Advances	$25.00
7/28/15	Property Preservation	$55.00
7/28/15	Misc. F/C and B/R expenses	$1.44
7/28/15	Misc. F/C and B/R expenses	$1.44
7/30/15	Property Preservation	$15.00
7/30/15	Property Preservation	$1.50
7/30/15	Property Preservation	$9.50
8/3/15	Property Preservation	$9.50
8/27/15	Property Preservation	$15.00
8/27/15	Property Preservation	$1.50
9/11/15	Attorney Advances	$150.00
9/25/15	Property Preservation	$15.00
9/25/15	Property Preservation	$1.50
10/27/15	Property Preservation	$1.50
10/27/15	Property Preservation	$15.00
11/30/15	Property Preservation	$15.00
11/30/15	Property Preservation	$1.50
12/10/15	Misc Corporate Disbursement	$1.18
12/10/15	Misc Corporate Disbursement	$1.18
12/23/15	Property Preservation	$15.00
12/23/15	Property Preservation	$1.50
	Total	**$19,977.25**

Debtor argues that Creditor's charges were discovered only recently. Debtor believed that an escrow account had been established to pay Creditor and that Creditor was collecting its necessary amount through the Chapter 13 Plan.

Debtor provides a task billing for the attorney fees incurred with this Objection and asserts that the total amount of fees is $8,695.00.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on July 11, 2017. Dckt. 160. The court instructed Creditor to file supplemental pleadings on or before June 2, 2017, and Debtor to reply, if at all, on or before June 19, 2017.

CREDITOR'S RESPONSE

Creditor filed a Response on June 2, 2017. Dckt. 167. Creditor argues that Debtor has failed to pay property taxes during the bankruptcy case. Creditor explains that when Rushmore Loan Management Services, LLP ("Rushmore") acquired the loan in May 2015, it learned from the records that Debtor had not been paying property taxes and were deficient by $12,000.00. Additionally, Rushmore allegedly payed the following tax advances on Debtor's behalf:

A. $8,948.04 on August 1, 2016;

B. $1,911.56 on August 2, 2016;

C. $2,443.05 on December 1, 2016; and

D. $2,433.05 on March 20, 2016.

Creditor argues that it was not required to file a Notice of Postpetition Fees, Charges, and Expenses pursuant to Federal Rule of Bankruptcy Procedure 3002.1 because tax payments were made on Debtor's behalf by Rushmore as escrow account disbursements, charged toward Debtor's escrow account.

Creditor notes that Debtor has routinely been paying $2,366.00, which—while being $128.78 in excess of the required monthly payment of $2,237.22—is not sufficient to support a $407.18 monthly escrow payment.

Creditor states that Rushmore filed a Response to the Notice of Final Cure Payment, indicating that Debtor was current with post-petition payments. Rushmore, allegedly intended to reflect only that post-petition payments were current, not that the escrow deficiency had been cured. Creditor states that Rushmore will be amending its Response.

Finally, Creditor states that it will be waiving all other fees, charges, and expenses because they were not noticed property according to Federal Rule of Bankruptcy Procedure 3002.1.

DEBTOR'S REPLY

Debtor filed a Reply on June 19, 2017. Dckt. 173. Debtor argues that Creditor's Response fails to:

A. Address the May 22, 2017 escrow account disclosure statement sent to Debtor;

B. Acknowledge or show how Creditor applied $8,901.00 paid for escrow by the Trustee;

C. Show how Creditor applied the post-bankruptcy escrow payments;

D. Detail the fees, expenses, or charges that make up the asserted $27,457.90 escrow shortage;

E. Address or explain why Creditor should be excused from its failure to file or provide Debtor with:

1. Payment change notices pursuant to Federal Rule of Bankruptcy Procedure 3002.1(b) during this case,

2. Notice of fees, expense, and charges pursuant to Federal Rule of Bankruptcy Procedure 3002(c) during this case,

3. Annual Escrow Account and disclosure statements required by RESPA during this case, and

4. Annual accountings of the escrow account as required by the Deed of Trust; and

F. Explain how Creditor should be exempt from Federal Rule of Bankruptcy Procedure 3002.1(c) based upon an "escrow account disbursement" exception when Creditor took no action consistent with maintaining an escrow account and did not "analyze and impound the escrow account until March 2017."

Dckt. 173 at 2.

Debtor does not oppose setting a monthly payment of $2,664.40, but Debtor opposes a shortage of thousands of dollars as unexplained. Debtor notes that the excess funds that were being paid monthly were put into an account that Creditor labeled "other" without any explanation of how those funds were applied to escrow or to Debtor's loan.

Debtor argues that Creditor does not account for $3,407.12 that Debtor paid in each of March, April, and May 2017. Additionally, Debtor contains to maintain that Creditor has not accounted for and itemized a $27,457.90 escrow shortage. Debtor argues that Creditor has owned the loan since 2011 but has

only provided documentation for escrow advances since August 1, 2016, and has not provided evidence of charges approximating $12,000.00 prior to May 2015.

In response to Creditor stating that Rushmore analyzed and impounded the escrow account in March 2017, Debtor argues that no accountings were provided to Debtor as required by RESPA and the Deed of Trust.

Regarding Creditor's argument that it was not required to file a Notice of Postpetition Fees, Charges, and Expenses, Debtor makes three arguments. First, Debtor argues that no escrow account was created until March 2017, well after Creditor allegedly advanced funds for expense payments. Second, Debtor argues that property preservation fees and other expenses can be run through the escrow account to bypass reporting requirements. Third, Debtor argues that an implied exception to Federal Rule of Bankruptcy Procedure 3002.1(c) for escrow account disbursements comes with an implied requirement that Creditor will comply with RESPA and Federal Rule of Bankruptcy Procedure 3002.1(b) and will disclose all escrow charges in an annual escrow account and disclosure statement.

JULY 11, 2017 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on August 15, 2017, at the parties' request, believing that they were close to negotiating an agreed-upon resolution. Dckt. 179.

DISCUSSION

No further pleadings have been filed since the July 11, 2017 hearing.

Federal Rule of Bankruptcy Procedure 3002.1(c) states that a claimholder must file and serve a notice of fees, expenses, and charges "within 180 days after the date on which the fees, expenses, or charges are incurred."

On April 24, 2017, Creditor filed its Response to Notice of Final Cure Payment, expressly affirming under penalty of perjury, that:

> "Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim."

and

> "Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.
>
> The next postpetition payment from the debtor(s) is due on: 04/24/2017"

Creditor Response to Notice of Final Cure Payment (Form 4100R), April 24, 2017 Docket Entry, Filed as part of Proof of Claim No. 5-1.

This Response confirms that Creditor admits that the Chapter 13 Trustee's Notice of Final Cure Payment (Dckt. 145) is correct and that there is no outstanding pre-petition or post-petition arrearage as of the February 2017 completion of Plan payments. Despite Creditor's assertion that Rushmore understood it to refer to post-petition fees only, Rushmore has not amended the Response.

It is worth restating, verbatim, exactly what Creditor confirmed under penalty of perjury in responding to the Notice of Final Cure Payment:

> "Part 2: Prepetition Default Payments
>
> Check one:
>
> ☒ Creditor agrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim
>
> ☐ Creditor disagrees that the debtor(s) have paid in full the amount required to cure the prepetition default on the creditor's claim. Creditor asserts that the total prepetition amount remaining unpaid as of the date of this response is: $_____
>
> Part 3: Prepetition Default Payments
>
> Check one:
>
> ☒ Creditor states that the debtor(s) are current with all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.
>
> The next postpetition payment from the debtor(s) is due on: 04/24/2017
>
> ☐ Creditor states that the debtor(s) are not current on all postpetition payments consistent with § 1322(b)(5) of the Bankruptcy Code, including all fees, charges, expenses, escrow, and costs.
>
> Creditor asserts that the total amount remaining unpaid as of the date of this response is:
>
> a. Total postpetition ongoing payments due: (a) $ _____
>
> b. Total fees, charges, expenses, escrow, and costs outstanding: + (b) $ _____
>
> c. Total. Add lines a and b. (c) $ _____
>
> Creditor asserts that the debtor(s) are contractually obligated for the postpetition payment(s) that first became due on: _ __/___/___"

Response to Notice of Final Cure Payment, Filed April 24, 2017, p. 1. It appears that this Response crossed in the mail with the Objection to Notice of Mortgage Payment Change.

Creditor provides the declaration of Barkley Sutton in response to the Motion. Declaration, Dckt. 168. Mr. Sutton testifies under penalty of perjury that he is an Assistant Vice President for Rushmore Loan Management Services, LLC, the servicer and attorney in fact for Creditor. He then goes further to testify that he, or possibly Rushmore, is not a party to this "action." Declaration, p. 2:2–4; Dckt. 168.

Mr. Sutton testifies that Rushmore, and not the Creditor, has made advances for property taxes on the Property that secures Creditor's claim. As stated above, Rushmore is not a party to this "action" and does not purport to be the creditor having a claim in this case, but is merely the loan servicer for Creditor.

Mr. Sutton offers no testimony as to why Debtor has an obligation to pay Rushmore any amounts.

Mr. Sutton provides the further testimony under penalty of perjury that "10. Rushmore did not analyze the Loan to recover the above tax payments until th Notice of Mortgage Payment Change was filed on 03/01/2017." Declaration, p. 4:1–2; Dckt. 168. He provides no testimony about why, if Rushmore had a belief that it had a right to be repaid for more than $12,000 in property taxes paid during the period March 2015 through December 2016 (Declaration, p. 3:16–21; *Id.*), it would have known of such prior to waiting until March 2017 to "analyze the Loan."

The March 1, 2017 Notice of Mortgage Payment Change (filed as part of Proof of Claim No. 5) filed by Creditor states that the current monthly principal and interest payment is $2,237.22. On top of this, Creditor states that the escrow payment is an additional $1,169.90. The attachment states that there is a ($27,457.90) escrow shortage, almost double the $15,735.70 in alleged property tax payments by Rushmore (not asserted to be advances by Creditor).

Attached to the Notice of Mortgage Payment Change is an Escrow Analysis Disclosure Statement dated February 23, 2017. That Statement identifies the Principal and Interest Payment to be $2,237.22. In addition, the "required escrow payment" is stated to be $407.18. In "double addition," the Statement says that there is an additional $762.72 that must be paid for "shortage/Surplus Spread."

On Proof of Claim No. 5, Creditor states under penalty of perjury that there was a $31,475.58 pre-petition arrearage. Exhibit A to Proof of Claim No. 5 states that the total monthly payment is $2,237.22, with that amount subject to either a change in the escrow requirement or interest rate. The arrearage is stated to consist of $31,321.08 for fourteen missed monthly payments and $134.50 for appraisal and inspection fees.

The confirmed Modified Plan provided for curing this arrearage in full through the Plan. Plan, ¶ 2.08(c); Dckt. 89. In his final report, the Chapter 13 Trustee confirms that the pre-petition arrearage on Creditor's secured claim was paid in the amount of $31,475.58. Dckt. 163 at 3.

As provided in the testimony of Debtor (Declaration, Dckt. 154), the 2016 Mortgage Interest 1098 Statement issued by Creditor (that was received in 2017) shows that Creditor and Rushmore were assessing various "Property Preservation DI" charges, with multiple charges in each month. No such "fees" and "charges" were disclosed in this bankruptcy case. The 1098 Statement also states that there was an escrow advance of $2,443.05 in December 1, 2016 for "county tax." Exhibit A, Dckt. 156.

Exhibit B is the Annual Escrow Account Disclosure Statement dated December 27, 2016, advising Debtor that the monthly mortgage payment was going to increase to $4,032.56. *Id.* Further, Creditor and Rushmore asserted that there was a $25,422.03 escrow shortage (taking the "starting balance" shown on the statement).

The Statement continues, indicating that prior to 2016 there was a negative escrow balance of $12,119.38, and in 2015, Creditor and Rushmore made payments of $11,392.09 for "County/Paris" and $1,911.56 for "County Tax." This ballooned the stated shortfall to $25,422.03. *Id.* The Statement does not indicate what a "County/Paris" disbursement is for with respect to Debtor's loan.

As addressed above, Creditor has confirmed/admitted under penalty of perjury that there are no pre- or post-petition arrearages to be addressed, with Debtor starting with the loan as current as of February 28, 2017. Response under penalty of perjury, filed with Proof of Claim No. 5, April 24, 2017 Docket Entry.

Creditor's admission is bolstered by there having been no notice of any fees, expenses, or charges as required by Federal Rule of Bankruptcy Procedure 3002.1(c). If any had actually existed, they would have been raised timely, and Debtor would then have had the opportunity to address them during the five years of the bankruptcy plan. If such actually existed and Creditor failed to provide the notice (and waited until the case was completed to spring them on the consumer debtor), then such non-compliance clearly works a prejudice on Debtor caused by Creditor's non-compliance.

As provided in Federal Rule of Bankruptcy Procedure 3002.1(e) and (h), the final notice of cure having been given, the confirmation that all pre- and post-petition obligations of Debtor under the loan are current through February 2017, the proof of claim specifying the pre-petition arrearage, and there being no notice during the bankruptcy case of any such post-petition, the court confirms that there are no pre-petition or post-petition (through February 2017) fees, expenses, charges, or arrearages due on the loan upon which Proof of Claim No. 5 is based.

Possible Tax Obligation

Rushmore, who admits it is not a party to this "action" appears to have sprung on these least-sophisticated debtors that there has been a "gift" of property tax payments made by Rushmore in 2016, paying property taxes for some unstated period of time. A skeptical person could well believe that Rushmore made such a gift in an attempt to try to create a trap for Debtor and take the Property by asserting a default for takes intentionally allowed by Rushmore to fester.

Conversely ever for the most least sophisticated creditor, Debtor has not addressed how Debtor could have some good faith belief that it could continue to live in the Property and not pay property taxes. On the Statement of Expenses filed in support of the Motion to Confirm the Modified Plan, Debtor confirmed that the property tax payment was not included in the monthly mortgage payment. Dckt. 87 at 3. Debtor further stated that each month Debtor was spending (saving to timely pay) $283 for the current real estate taxes and $75.00 for "back taxes." The $283.00 per month amount equates to $3,396.00 annually for taxes. Over five years, that totals $16,980.00, an amount suspiciously close to the $15,735.70 property tax payment gift made by Rushmore.

Even if given such a gift, then Debtor has not account for $16,980.00 in additional projected disposable income for this phantom expense not paid by Debtor.

DETERMINATION OF TAX OBLIGATION, IF ANY

Creditor and Rushmore have squarely presented the court with the issue of whether, now, as of the conclusion of this case there is any obligation of Debtor to pay a post-petition property tax arrearage. Creditor will have to show first that there is an obligation to pay Creditor under the Note and Deed of Trust for what appears to have been a "reorganization gift" made by Rushmore.

Debtor also needs to address for the court, the Trustee, and creditors, where the $16,980.00 of post-petition property taxes are if not paid by Debtor.

Award of Attorneys' Fees

Federal Rule of Bankruptcy Procedure 3002.1(f)(2) further authorizes the award of attorney's fees and costs related to the failure to provide the required notice of fees, expenses, and charges. In this case, Creditor having filed a Notice of Mortgage Payment Change and sent a Statement purporting to state Debtor owed payment for charges, fees, expenses, advances for which no Notice had been given, Debtor was forced to both investigate this contention and then file the Objection to Notice of Mortgage Payment Change.

Creditor has ameliorated the problem a bit with its admission in the Reply that there are no pre- or post-petition (through February 2017) arrearages owed by Debtor. However, Creditor did not rescind its Notice of Mortgage Payment Change and file a new one accurately stating the payment amount and that there were no pre- or post-petition (through February 2017) arrearages owed under the loan. This inaction required Debtor and Debtor's counsel to continue in having to prosecute the Objection. Then, Creditor's Response after the May 9, 2017 hearing necessitated more work for Debtor's counsel.

Debtor's counsel has provided copies of time records for work asserted to have been done in connection with the December 27, 2016 Annual Escrow Account Disclosure Statement and the more than doubling the amount of the asserted regular mortgage payment to $4,932.56. No declaration of counsel is provided authenticating the records.

The billing records state a total of $8,345.00 in fees requested. That is 21 hours of time at $350.00 per hour and 3 hours at $250.00 per hour by Mark Wolff, counsel for Debtor. No task billing analysis is provided. The court organizes the legal work into several task areas:

A. Communications with Client and Initial Review of Statement Doubling Payment and Stating Arrearage..... 3.7 hours

B. Communications with Counsel for Creditor..... 1.4 hours

C. Research in Preparation of Objection..... 5.5 hours

D. Drafting Objection Pleadings.....10.5 hours

E. Meeting with Client Re Objection, Declaration..... 3.6 hours

For the above 24.7 hours, the total fees average $337.85 per hour, not an unreasonable hourly rate.

The need for Debtor to have counsel address the Notice of Mortgage Payment Change that doubled Debtor's mortgage payment was driven by the Notice itself and Creditor asserting theretofore undisclosed charges, fees, advances, and costs purported to have been piled up by Creditor and its loan servicer.

After the May 9, 2017 hearing, Debtor's counsel filed a Declaration listing additional hours (with an invoice) of work done in this matter. Dckt. 174. Debtor's counsel states that he spent an additional 6.6 hours on this matter: 5.0 hours reviewing Creditor's Response and drafting the Reply, 1.2 hours communicating with Debtor and preparing a declaration, and 0.4 hours compiling billing and drafting Debtor's counsel's Declaration regarding time spent. *Id.* Debtor's counsel states that his hourly rate is $350.00. The total additional incurred fees are $2,310.00.

From a review of the pleadings, the potential attorneys' fees award has grown to$9,380.00. That could be viewed as allowing for 26.8 hours of the 31.3 hours of work at $350.00 per hour, or it could be viewed as lowering the hourly rate to $300.00 for 31.27 hours for the above work. Either way, the court is convinced that $9,380.00 in attorneys' fees were reasonably incurred in having to address the Notice of Mortgage Payment Change purporting to double the Debtor's monthly mortgage payment. The court notes that counsel for Debtor did attempt to communicate with counsel for Creditor for two weeks before beginning to work on the Objection.

Presumably, as these proceedings continue and Creditor belatedly shows a basis for asserting that there is an obligation to pay it for the property tax payment gift that Rushmore states it made for Debtor, the attorneys' fees cost demanded by Debtor will rise.

Requested Award of Sanctions

The Objection also requests the additional award of Sanctions, citing the court to Federal Rule of Bankruptcy Procedure 3002.1(i)(2) "other appropriate relief" language as the legal basis. Debtor also directs the court to *In re Gravel* for the contention that Rule 3002.1 provides that the court can issue an order for sanctions pursuant thereto. 556 Br. 561 (Bankr. D. Vt. 2016).

First, the court is not as convinced as Debtor that Rule 3002.1 "explicitly" empowers the court to issue corrective sanctions. While there may be other grounds for doing so, they are not now before this court. Second, the court is ordering the payment of $9,380.00 in compensatory attorneys' fees as damages. That is not an insignificant amount.

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 Notice of Mortgage Payment Change filed by Michael and Jennifer Peters, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Hearing on the Objection is continued to 3:00 p.m. on August 29, 2017.

36.	**14-20671-E-13** **RJ-5**	**CATHERINE TROUT** **Richard Jare**	**MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC** **7-10-17 [58]**

Final Ruling: No appearance at the August 15, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 17, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates LLC ("Creditor") against property of Catherine Trout ("Debtor") commonly known as 9225 Gilardi Road, Newcastle, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $17,228.25. An abstract of judgment was recorded with Placer County on June 22, 2012, that encumbers the Property.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of $265,000.00 as of the date of the petition. The unavoidable consensual liens that total $105,670.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of $175,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by 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 judgment lien of Portfolio Recovery Associates LLC, California Superior Court for Placer County Case No. MCV0053928, recorded on June 22, 2012, Document No. 2012-0055913-00, with the Placer County Recorder, against the real property commonly known as 9225 Gilardi Road, Newcastle, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

37. 17-23273-E-13 RUTH/ROSCO RIGSBY MOTION TO CONFIRM PLAN
HDR-3 Harry Roth 6-21-17 [32]

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

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

Sufficient Notice Not Provided. No Proof of Service has been filed with the Motion. 42 days' notice is required. FED. R. BANKR. P. 2002(b); LOCAL BANKR. R. 3015-1(d)(1).

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

The Motion to Confirm the Amended Plan is denied without prejudice.

NO PROOF OF SERVICE

Debtor did not file a Proof of Service with the Motion. Without all necessary parties being served, the Motion cannot be addressed on its merits. Therefore, the Motion is denied without prejudice.

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 Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF DEBTOR PROVIDES SUFFICIENT NOTICE

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor has provided evidence in support of confirmation. The Chapter 13 Trustee filed an Amended Response indicating non-opposition on August 7, 2017. Dckt. 64. The Amended 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 Amended Chapter 13 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, and Debtor's Amended Chapter 13 Plan filed on June 21, 2017, is confirmed. Debtor's Counsel 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.

38. 17-23874-E-13 MJD-1 | **LAURA HILTON** **Matthew DeCaminada** | **MOTION TO VALUE COLLATERAL OF CARMAX BUSINESS SERVICES, LLC 7-20-17 [16]**

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on July 20, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Value Secured Claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing, ----------.

The Motion to Value Secured Claim of CarMax Business Services, LLC dba CarMax Auto Finance ("Creditor") is granted, and Creditor's secured claim is determined to have a value of $12,289.00.

The Motion filed by Laura Hilton ("Debtor") to value the secured claim of CarMax Business Services, LLC dba CarMax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Mercedes SLK ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,289.00 as of the petition filing date. As the owner, 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).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on July 26, 2017. Dckt. 25. The Trustee states that Debtor does not provide any information about the Vehicle's style, condition, or needed repairs. He notes that Creditor has not filed a claim and that Schedules A and D list the Vehicle as having 77,000 miles and being in good condition.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred on March 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,240.00. Therefore, Creditor's claim secured by a lien on the asset's title is under-collateralized. Creditor's secured claim is determined to be in the amount of $12,289.00, the value of the collateral. *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 to Value Secured Claim filed by Laura Hilton ("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 CarMax Business Services, LLC dba CarMax Auto Finance ("Creditor") secured by an asset described as a 2009 Mercedes SLK ("Vehicle") is determined to be a secured claim in the amount of $12,289.00, 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 $12,289.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

39. 17-23580-E-13 DPC-1 | **DEBORAH MATTIUZZI** **Ronald Holland** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **7-11-17 [19]**

Final Ruling: No appearance at the August 15, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection was dismissed without prejudice, and the matter is removed from the calendar.**

40. 17-22593-E-13 HOWARD THOMAS — CONTINUED MOTION TO SELL
WSS-6 W. Steven Shumway — 6-27-17 [65]

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

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)(C).

Local Rule 9014-1(f)(2) Motion—Final Hearing.

Sufficient Notice Not 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 June 27, 2017. By the court's calculation, 14 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 continued this Matter from July 11, 2017, for further hearing. No opposition has been filed to the Motion.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Howard Thomas, Chapter 13 Debtor, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 1913 Ambridge Drive, California ("Property").

JULY 11, 2017 HEARING

Noting that sufficient notice had not been provided, the court continued the hearing on this Motion to 3:00 p.m. on August 15, 2017. Dckt. 93.

DISCUSSION

No further pleadings have been filed since the July 11, 2017 hearing.

Movant discloses that the sale has occurred already. The proposed purchaser of the Property is Mark Henderson, and the terms of the sale are:

A. Purchase price of $390,000.00;

B. All cash offer;

C. Initial deposit of $5,000.00;

D. Escrow to close ten days after acceptance of offer;

E. Offer accepted on May 17, 2017;

F. Movant to pay for a natural hazard zone disclosure report and owner's title insurance policy;

G. Buyer to pay for an escrow fee, county transfer tax or fee, city transfer tax or fee, and any private transfer fee;

H. Escrow held by Fidelity National Title El Dorado Hills; and

I. Broker's commissions of $11,700.00 to each of Movant's and Buyer's brokers, totaling $23,400.00 (six percent of sale).

DISCUSSION

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

Granting of Retroactive Relief

On its face, the Motion requests that the court "ratify" a prior sale that was conducted by the woman who holds a power of attorney for Debtor (and who has been seeking to receive a portion of the sales proceeds). The Motion does not request that the court issue an order for retroactive relief.

The Motion does not state with particularity (or even generally) grounds for which retroactive relief is proper. Rather, the Motion merely states: the Property was sold; no order was obtained; ratify the sale.

While the court is authorized to grant retroactive relief, it is more than merely that a party requests such relief. As discussed in the context to employing professionals:

> "The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services. See *Halperin v. Occidental Fin. Group, Inc. (In re Occidental Fin. Group, Inc.)*, 40 F.3d 1059, 1062 (9th Cir.1994); *In re THC Fin. Corp.*, 837 F.2d at 392. We have held that such retroactive approval should be limited to situations in which "exceptional

> circumstances" exist. *In re Occidental Fin. Group, Inc.*, 40 F.3d at 1062; *In re THC Fin. Corp.*, 837 F.2d at 392.
>
> To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankrupt estate in a significant manner. *In re Occidental Fin. Group, Inc.*, 40 F.3d at 1062 (finding retroactive approval inappropriate where these two conditions were not met); *In re THC Fin. Corp.*, 837 F.2d at 392 (affirming denial of retroactive approval where these two conditions were not satisfied) (citations omitted). Whether additional factors should or must be considered is contested in this appeal."

Atkins v. Wain Samuel & Co. (In re Atkins), 69 F.3d 970 (1995).

Generally applying these principles, extrapolating from prior hearings and testimony, the failure to obtain prior approval arose due to error. While unclear how a title company could have closed escrow *if told by Debtor's counsel of the pending bankruptcy case*, Debtor and his counsel (and his fiduciary exercising the power of attorney) have come to the court. It appears that Debtor's counsel believed that he could just get this case dismissed days before the escrow closed, not appreciating the court's concerns with how the purported power of attorney was being exercised.

Interests of Debtor

On the second point, approving the sale is in the best interests of Debtor (who has a significant exemption) and the buyer. Not approving the sale could create a series of costly, expensive lawsuits in which the title company, lenders, real estate agents, the buyer, counsel for Debtor, the fiduciary exercising the power of attorney, and insurance companies for all point the finger in the other direction. The costs of such litigation could well exceed the sales price. The sales price is consistent with Debtor's stated value of the Property.

This case has a somewhat short, but tortured history in which Debtor, who is incarcerated, has had his financial life handled by a woman who holds his power of attorney (who while stated to be his "wife," it has been presented to the court that no marriage license has been filed with the County Recorder) and his attorney.

Debtor has appeared telephonically at a prior status conference, and the court is confident that Debtor's counsel is actually communicating with his client and not merely doing the fiduciary person's bidding.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it pays Movant's creditors and provides $81,427.09 in net proceeds for Movant.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately $23,400.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Howard Thomas, 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 Howard Thomas, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Mark Henderson or nominee ("Buyer"), the Property commonly known as 1913 Ambridge Drive, Roseville, California ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $390,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 68, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> C. Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> D. Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Chapter 13 Debtor's broker, Ryan Watts, and to the buyer's broker, Lori Holloway—$11,700.00 to each agent.
>
> E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow,

who shall hold such monies pending further order of the court. All rights, exemptions, and other interests of the Debtor continue in the proceeds notwithstanding said proceeds being delivered to the Chapter 13 Trustee.