

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 19, 2017 at 2:00 p.m.

1.	13-33000 -C-13	DONALD/JANICE RUBIN	CONTINUED MOTION TO MODIFY PLAN
	PGM-1	Peter Macaluso	7-17-17 [52]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Trustee is uncertain of the debtors' ability to pay as the debtors filed amended Schedules I and J instead of Supplemental Schedules that indicate (a) debtors are employed (without providing the Trustee with any supporting documentation); (b) debtors include \$1,242.15 for rental or home ownership on Schedule J whereas the proposed modified plan includes in Class 1 the first and second deeds on the debtors' residence; and (c) neither Schedule I nor J reflect health insurance expense.

Debtors' Response

Debtors filed a response stating that the Amended Schedules should have been filed as Supplemental Schedules and that the debtors have not incurred additional debt and that the plan is a 100% plan which utilizes social security income. Debtors indicated that corrected supplemental schedules will be filed by the date of the hearing. The court notes the supplemental schedules filed with debtors' response.

Debtors Schedule J still includes the problems noted by the Trustee. Debtor may not be able to make plan payments.

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

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

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

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

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

Thru #3

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 28, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 14-1 of Navient, LLC is sustained and the claim is disallowed in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Navient, LLC ("Creditor"), Proof of Claim No. 14-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$138,025.12. Objector asserts that the claim bar date for governmental units was November 8, 2016 whereas the Proof of Claim for Claim #14-1 is July 20, 2017.

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

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

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

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

The Objection to Claim of Navient, LLC, Creditor filed in this case 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 Proof of Claim Number 14-1 of Navient, LLC is sustained and the claim is disallowed in its entirety.

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 28, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 15-1 of Navient, LLC is sustained and the claim is disallowed in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Navient, LLC ("Creditor"), Proof of Claim No. 15-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$8,421.62. Objector asserts that the claim bar date for governmental units was November 8, 2016 whereas the Proof of Claim for Claim #14-1 is July 20, 2017.

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

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

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

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

The Objection to Claim of Navient, LLC, Creditor filed in this case 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 Proof of Claim Number 15-1 of Navient, LLC is sustained and the claim is disallowed in its entirety.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor is delinquent in plan payments in the amount of \$350.00. Debtor has paid \$36,650.00 into the plan to date.

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

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

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

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

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

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 16, 2017. 28 days' notice is required.

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

The Objection to Discharge is sustained.

Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on August 16, 2017. Dckt. 19.

The Objector argues that the Debtor is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on April 6, 2015. Case No. 15-22787. The Debtor received a discharge on August 10, 2015.

The instant case was filed under Chapter 13 on July 10, 2017.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on August 10, 2015, which is less than four-years preceding the date of the filing of the instant case. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 17-24506), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

IT IS ORDERED that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 17-24506, the case shall be closed without the entry of a discharge.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor's proposed plan reduces dividend to unsecured creditors to .63% because unsecured claims came in substantially unexpectedly higher than anticipated. The modified plan is feasible, however the Trustee questions whether the plan is proposed in good faith where the debtor has expressed surprise over an unsecured creditor filing 8 proofs of claim, but has not objected to the claims. Furthermore, debtor represented that he had turned control over the business to his brother "many years prior to filing," however the transaction underlying the unsecured proofs of claim (i.e. a personal guaranty to obtain credit for a business which the debtor has an interest in) was March 10, 2015, less than one year prior to filing of the bankruptcy.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 ~~xxxxxx~~ and the proposed Chapter 13 Plan ~~xxxxxxx~~.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on Shortened Time by order of the Court.

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2017. Forty-two days' notice is required. The court issued an order to shorten time setting this hearing on a shortened time.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 9014-1(f)(3), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee opposes confirmation on the basis that:

A. Trustee is uncertain of the plan payments. Debtor is current under the plan.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) however the debtor can specify the plan payment in the order confirming and the plan can be confirmed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 granted and Debtor's Chapter 13 Plan filed on August 23, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 24, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

- A. Debtor is delinquent in plan payments in the amount of \$694.00. Debtor has paid \$0 into the plan to date.
- B. Debtors failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required.
- C. Debtor admitted at the First Meeting of Creditors that she has not filed her 2016 tax return.

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

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

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

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

IT IS ORDERED that Objection to confirmation of the Plan is sustained and the

proposed Chapter 13 Plan is not confirmed.

Thru #10

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 24, 2017. Fourteen days' notice is required.

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

The court's decision is to overrule the Objection.

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

A. The plan relies upon a pending motion to value (see matter #10).

The court notes that the motion to value is unopposed and the court finds cause to grant that motion. Therefore, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on July 10, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

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

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 17, 2017. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Santander Consumer, USA, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2013 Dodge Avenger. The Debtor seeks to value the property at a replacement value of \$5,820.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2013, more than 910 days prior to the filing of the petition, with a balance of approximately \$17,028.39. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$5,820.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11
U.S.C. § 506(a) is granted and the claim of Santander Consumer
USA secured by Debtor's 2013 Dodge Avenger, is determined to be
a secured claim in the amount of \$5,820.00, and the balance of the
claim is a general unsecured claim to be paid through the confirmed
bankruptcy plan.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 17, 2017. Twenty-eight days' notice is required. That requirement was met.

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

Ditech Financial LLC moves for an order of the court confirming termination of the automatic stay pursuant to § 362(c)(3) with respect to the real property commonly known as 8 Towne Park Ct. No. 8, Little Rock, Arkansas.

Debtor filed this case on November 15, 2012. The most recent amended plan was confirmed on March 24, 2013, Dckt. 60. In that plan, Ditech Financial LLC is listed in Class 3 which states that "upon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

As a result, the automatic stay does not act as a stay against Ditech Financial LLC from exercising its rights against its collateral including foreclosure.

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 Termination or Absence of Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence,

arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Confirm Termination or Absence of Stay is granted.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor filed amended Schedules I and J not supplemental schedules with no effective date. Debtor has not provided the Trustee with the latest pay advice and there is confusion regarding debtor's contribution for retirement plans.

Debtor replies that debtor's counsel was substituted in during the case and is unsure how the previous counsel calculated debtor's income, deductions, and expenses. Debtor requests a short continuance to allow time for debtor to meet with counsel to file supplemental schedules.

The court continued the Motion to Modify to September 19, 2017 at 2:00 p.m. The court is not in receipt of supplemental schedules, and as a result, the Motion to Modify will be denied.

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is denied.

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2017. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on August 9, 2017 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on September 5, 2017. Fourteen days' notice is required. That requirement was met.

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

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 16-23617) was filed on June 1, 2016 and dismissed on January 22, 2017, for Debtor's failure to make plan payments. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

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

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

Here, debtor's failure to make plan payments occurred because the debtor became gravely ill. Debtor is now retired and has a stable monthly payment and can therefore make plan payments consistently. The Chapter 13 Trustee does not oppose the motion as the debtor's circumstances have changed significantly.

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 24, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

- A. Debtor lists Capital One Auto Finance and Safe Credit Union on Schedule D, however those debts are not provided for in the plan. Debtor admitted to being behind on one payment to Safe Credit Union.
- B. Geoffrey Richards filed a priority claim of \$2,000. However, the plan does not provide for this claim.
- C. Debtor's plan calls for the first three months to have plan payments of \$0 whereas the debtor lists prospective monthly net income of \$262.13 for those months.
- D. Debtor has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtor filed amended Schedules I and J not supplemental schedules with no effective date. Debtor has not provided the Trustee with the latest pay advice and there is confusion regarding debtor's contribution for retirement plans.

Debtor replies that debtor's counsel was substituted in during the case and is unsure how the previous counsel calculated debtor's income, deductions, and expenses. Debtor requests a short continuance to allow time for debtor to meet with counsel to file supplemental schedules.

The court continued the Motion to Modify to September 19, 2017 at 2:00 p.m.

The Chapter 13 Trustee filed a status report indicating that the debtor has cured the deficiency in plan payments. As a result, the Motion to Confirm is no longer opposed.

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 granted and Debtor's Chapter 13 Plan filed on July 11, 2017 is confirmed, and counsel for the Debtor shall prepare

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. The proposed plan mistakenly lists the amount of money total paid into the plan to date.
- B. The plan mistakenly proposes 0% to unsecured creditors whereas the Trustee has disbursed 1% to unsecured creditors.

The Trustee has no opposition if these items are corrected in the order confirming. The court likewise will grant the motion and confirm the plan if these mistakes are corrected in the order confirming.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the 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 granted and Debtor's Chapter 13 Plan filed on August 8, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed

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

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2017. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on May 18, 2017 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #20

Tentative Ruling: The Motion to Continue Evidentiary Hearing has been set for hearing on Shortened Time by order of the Court.

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2017. The court issued an order to shorten time setting this hearing on a shortened time.

The Motion to to Continue Evidentiary Hearing been set for hearing on the notice required by Local Bankruptcy 9014-1(f)(3), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is xxxxxxxxxxxxxxxxxxxxxxxxx

Movant, Bosco Credit LLC moves for an order continuing the evidentiary hearing set for a Motion to Value Collateral on the basis that counsel for the movant, Wright Finlay & Zac discovered a conflict of interest necessitating the substitution of counsel to The Law Offices of Michelle Ghidotti who requests time to prepare for the evidentiary hearing.

Debtor's Response

Debtor opposes continuance on the basis that the creditor has asserted no legal basis for the continuance requested. The original Motion to Value was filed on June 19, 2017 and the movant had notice of the Motion to Value on April 20, 2017. Debtor questions why, taking movant's contentions as true, Wright Finlay & Zac have not been subbed out of all cases in which they are attorney for Bosco. The movant had plenty of time to discover this conflict of interest and a continuance solely based upon movant's failure to discover until the last moment is not warranted.

Movant's Reply

Movant specifies that the Motion to Value was filed on June 19, 2017 and opposition filed July 18, 2017. Movant states that while preparing for the evidentiary hearing, the conflict of interest was discovered. The conflict of interest arose as prior counsel represents Ocwen in other matters and the position of Bosco in this evidentiary hearing would run contrary to the interests of Ocwen in this case.

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 Continue Evidentiary Hearing filed by the Debtor having been

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

IT IS ORDERED that **XXXXXXXXXXXXXXXXXXXXXXX**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. The Plan relies upon a Motion to Value.

The court continued the Motion to Value, as a result this matter will be continued to the same date and time as the Motion to Value. The court notes that on September 6, 2017, the Motion to Value was taken off calendar and a Motion to Continue Evidentiary Hearing was set for September 19, 2017. The court will continue this Motion.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to a time to be set at the hearing.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

- A. Debtor's proposed plan does not address how post petition arrears of \$5,908.24 will be treated.
- B. Debtor failed to specify certain details for the Trustee such as the specific date he lost his job and the date his new employment started. Debtor has not disclosed if he received unemployment benefits or a severance pay. Debtor has no current Schedule I or J on file.
- C. Debtor is delinquent in plan payments in the amount of \$1,800.00.

Debtor's Reply

Debtor replies requesting additional time to supplement the record.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The debtor is delinquent in plan payments and needs to file updated Schedules I and J. The plan is not confirmable. The Motion to Confirm 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 Confirm the Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of

counsel, and good cause appearing,

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

Thru #24

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 5, 2017. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

The Creditor, Bank of America, N.A., as servicer for the Bank of New York Mellon, opposes confirmation of the plan on the basis that the plan does not propose to cure the pre-petition arrears owed to Bank of New York Mellon in the amount of \$12,003.21. Furthermore, plan payments are proposed to be \$2,643.78, yet the debtor's Schedules I and J indicate only \$521.00 in disposable income per month.

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

IT IS ORDERED that Objection to confirmation of the Plan is sustained and the

proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on Shortened Time by order of the Court.

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2017. Forty-two days' notice is required. The court issued an order to shorten time setting this hearing on a shortened time.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 9014-1(f)(3), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee opposes confirmation on the basis that:

- A. The plan proposes payment of \$780.00 per month, however the new mortgage payments plus the Trustee's compensation totals \$805.53 per month.
- B. The plan calls for no payment to the IRS or Butte County Tax Collector until the sale of real property on December 1, 2017. Both creditors have filed a claim and there is no evidence that either entity has agreed to this treatment.
- C. No declaration was filed by the debtor in support of the Motion to Confirm.
- D. Plan relies upon a sale of real property. Debtor filed a motion to sell but set it on 15 days notice where 21 days is normally required.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) 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 Motion to Confirm the Modified Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Modified Plan is denied and the plan is not confirmed.

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

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

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

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 29, 2017. Twenty one days' notice is required.

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

The Motion to Sell Property is denied.

The Bankruptcy Code permits the 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 "Property" described as follows:

A. 14533 Grinnell Court, Magalia, California.

The proposed purchaser of the Property is Andrea Eiko Nabeta and the terms of the sale are \$277,500, and there are no liens on the property. The proceeds will be sufficient to pay 100% of the plan.

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: xx.

Trustee's Response

Trustee responds to the Motion to Sell and, while not opposing the terms of the sale, Trustee points out several procedural flaws in the filing of this motion.

A. Debtor filed the motion on 15 days notice but did not obtain an Order Shortening Time. Under FRBP 2002(a)(2), 21 days notice is required.

B. Debtor has failed to file a declaration in support of the motion.

C. Debtor's motion fails to indicate the name of the buyer of the property, the name of the lender and the name of the title company. Debtor failed to include an estimated escrow closing statement.

D. The debtors assert that the sale of the property will result in full 100% distribution to creditors. However, the governmental claims bar date has not yet passed, and the Trustee wants to make sure that any funds would be paid to the Trustee so as to allow for further distribution if any governmental claims are filed after the sale but before the bar date.

The court continued this hearing from September 12, 2017. The court is not in receipt of any admissible evidence, any newly noticed and served notice of hearing, or any attempt to cure any of the procedural deficiencies outlined by the Trustee. As a result, the Motion will be denied.

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

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

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

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

IT IS ORDERED that Motion is denied without prejudice.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Trustee opposes confirmation on the basis that:

A. Debtors' modified plan reduces monthly plan payments by \$40 per month. The reason given for the modification is simply that the debtors are struggling to make plan payments and are 3 months behind. There are no specific details as to what circumstances caused the delinquency and there is no current statement of income and expenses on file.

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

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

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

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

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

Final Ruling: No appearance at the September 19, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2017. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on August 15, 2017 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Thru #28

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 2, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 4-1 of Quantum3 Group, LLC is overruled.

Chapter 13 debtors, ("Objector") requests that the court disallow the claim of Quantum3 Group, LLC ("Creditor"), Proof of Claim No. 4-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$3,180.15. Objector asserts that the last transaction date was March 9, 2009, and the statute of limitations is 4 years. Therefore, the statute of limitations for collection of the debt has expired. Debtor additionally requests attorney's fees in the amount of \$675.

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

Trustee's Response

Trustee responds to inform the court that the Trustee has disbursed funds in the amount of \$127.21 to the creditor. Debtor has a prior case that was filed on May 2011 and dismissed June 2013. Trustee requests that

no order require the Trustee to recover the funds as that would run contrary to LBR 3007-1(d)(4). Trustee also points out that as the Trustee made payments under the debtor's plan, the statute of limitations may not have run. Additionally, debtor filed the current case less than one week after the prior case was dismissed, so the statute of limitations may have been extended under § 108.

Creditor's Opposition

Creditor reiterates the Trustee's arguments that the statute of limitations has not run, and additionally argues that debtors are estopped from objecting to the claim as they agreed to the claim in two prior bankruptcies and made payments upon such claim.

Based on the evidence before the court, the creditor's claim is not disallowed. The Statute of Limitations has not run on the debt. The debtor made payments more recently than 2009 and it is undisputed that the debtor filed for bankruptcy before the statute of limitations had run. Since the debtors' first bankruptcy, the debtor has not been out of bankruptcy long enough for the 30 day time limit to run pursuant to § 108. As a result, the statute of limitations has not run, and the objection is overruled and the claim is not disallowed.

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

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

The Objection to Claim of Quantum3 Group, LLC, Creditor filed in this case by Chapter 13 debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 4-1 of Quantum3 Group, LLC, is overruled.

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 2, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 5-1 of Quantum3 Group, LLC is overruled.

Chapter 13 debtors, ("Objector") requests that the court disallow the claim of Quantum3 Group, LLC ("Creditor"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$4,040.31. Objector asserts that the last transaction date was March 9, 2009, and the statute of limitations is 4 years. Therefore, the statute of limitations for collection of the debt has expired. Debtor additionally requests attorney's fees in the amount of \$675.

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

Trustee's Response

Trustee responds to inform the court that the Trustee has disbursed funds in the amount of \$161.61 to the creditor. Debtor has a prior case that was filed on May 2011 and dismissed June 2013. Trustee requests that no order require the Trustee to recover the funds as that would run contrary to LBR 3007-1(d)(4). Trustee also

points out that as the Trustee made payments under the debtor's plan, the statute of limitations may not have run. Additionally, debtor filed the current case less than one week after the prior case was dismissed, so the statute of limitations may have been extended under § 108.

Creditor's Opposition

Creditor reiterates the Trustee's arguments that the statute of limitations has not run, and additionally argues that debtors are estopped from objecting to the claim as they agreed to the claim in two prior bankruptcies and made payments upon such claim.

Based on the evidence before the court, the creditor's claim is not disallowed. The Statute of Limitations has not run on the debt. The debtor made payments more recently than 2009 and it is undisputed that the debtor filed for bankruptcy before the statute of limitations had run. Since the debtors' first bankruptcy, the debtor has not been out of bankruptcy long enough for the 30 day time limit to run pursuant to § 108. As a result, the statute of limitations has not run, and the objection is overruled and the claim is not disallowed.

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

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

The Objection to Claim of Quantum3 Group, LLC, Creditor filed in this case by Chapter 13 debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 5-1 of Quantum3 Group, LLC, is overruled.

Thru #30

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2017. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee does not oppose the motion to confirm.

Creditor, Schools Financial Credit Union filed a limited opposition to the plan. The Creditor had previously filed a Motion for Relief from Stay that has been continued to this hearing date (see matter #30). At the previous hearing on the Motion for Relief from Stay, the court ordered that adequate protection payments be made to the Creditor pending the continued hearing in the amount of \$1,700 within 3 days of entry of the order and \$2,000 from the August 2017 plan payment. Creditor has no opposition to the plan if future payments are paid in full in accordance with the plan and the adequate protection payment of \$1,700 is not deducted from the next dividend of \$2,000 to be paid to Creditor.

According to the court's reading of the plan, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. The court will grant the motion if the debtor agrees to the treatment of Creditor Schools Financial Credit Union.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 18, 2017 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. [17-23287](#)-C-13 ROBERT AMADOR
RTD-1 Mikalah Liviakis

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
6-26-17 [[20](#)]

SCHOOLS FINANCIAL CREDIT
UNION VS.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 26, 2017. 14 days' notice is required. That requirement was met.

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

The Motion for Relief From the Automatic Stay is denied.

Schools Financial Credit Union seeks relief from the automatic stay with respect to the real property commonly known as 12121 Gold Pointe Lane, Gold River, California. The moving party has provided the Declarations of Theresa Estorga and Roxanne Daneri to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Estorga Declaration states that the Debtors have not made 2 post-petition payments, with a total of \$1,767.82 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$388,263.18 (including \$133,025.09 secured by movant's junior trust deed), as stated in the Estorga Declaration, while the value of the property is determined to be 390,000,000, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee filed a statement of nonopposition. Dkt. 32.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R.

432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor's Supplemental Brief

Debtor filed a supplemental brief indicating that an amended plan had been filed that intended to cure the arrearages of the creditor.

Creditor's Supplemental Brief

The Creditor's supplemental brief indicates that (1) the adequate protection payments proposed by the debtor in his amended plan are not sufficient to cure the arrearages on the Creditor's claim, (2) the plan is unconfirmable, and (3) cause exists to grant relief from stay.

The court does not find that the amended plan will satisfy the arrearages owed to the Creditor. Furthermore, the debtor has 2 other plans set for confirmation that have not been withdrawn.

The court continued the hearing to September 19, 2017 and ordered adequate protection payments be made to the creditor. The Trustee filed a supplemental declaration indicating that the adequate protection payments had been made.

The Creditor filed a supplemental brief indicating that if the Motion to Confirm is granted, the motion for relief from stay can be denied without prejudice. If the Motion to Confirm is not granted, Creditor reiterates its desire to obtain relief from stay to foreclose on the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

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

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

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

IT IS ORDERED that the Motion for Relief from Stay is denied without prejudice.

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

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

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 22, 2017. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Proof of Claim Number 1-1 of Wells Fargo Bank, N.A. is overruled.

Lee Charles Jasper, the Chapter 13 debtor ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$421,679.18. Objector asserts that Wells Fargo is charging double principal because in its proof of claim, Wells Fargo adds the total missed payment to Column G ("Prin int & esc. past due balance"). Debtor asserts that when missed payments are added to Column G, they include principal payments, however the principal amount in Column M does not adjust down the amount of the principal that is unpaid.

The Chapter 13 Trustee weighed in to indicate that the proof of claim does not include address, contact phone, or email of the person who completed the claim. The attachment is not legible as to the date column.

Wells Fargo opposes the Debtor's motion on the basis that (1) the debtor has not rebutted the prima facie validity of the proof of claim, and (2) Column G shows a running tally of all contractual payments that are past due. Each time a payment is missed, the principal, interest and escrow amount is added to the running total. Column M is only adjusted when a payment has been received. Column G does not list the amount of payments required in conjunction with Column M, they just show different things.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in

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

The court is unconvinced that the debtor's prayer for relief, namely a total disallowance of Wells Fargo's claim 1-1, is warranted. Even if the court were to accept each of the debtor's assertions as true, the claim could only be disallowed as to the portion that is unlawfully charged to the debtor. Here, Wells Fargo has adequately answered the concerns of the debtor. However, the court is mindful that the accounting is confusing by the creditor, and encourages the parties to work together to understand exactly what is owed, and how it can be paid.

The court continued the hearing to September 19, 2017 and requested that the creditor provide the debtor the payout amount by September 5, 2017.

On September 13, 2017, the creditor filed a status report indicating that the payout amount was provided to the debtor. The debtor subsequently paid the amount due and it has been received by the creditor. Creditor requests that the objection be withdrawn as there are no further issues.

The Objection to the Proof of Claim is overruled.

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

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

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

IT IS ORDERED that the objection to Proof of Claim Number 1-1 of Wells Fargo Bank, N.A. is overruled.
