

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

September 22, 2015 at 2:00 P.M.

1. [12-23306](#)-C-13 EDWARD/JUSTINA BONNAFON MOTION TO MODIFY PLAN
CYB-3 Candace Brooks 8-17-15 [[51](#)]

Also #2

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 17, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. The Modified Plan calls for no additional payments although one

additional payment of \$588 was on 9/3/15 for a total of \$24,696. If the motion is granted, unless the plan is further modified to provide for one additional payment of \$588 on 9/3/15 for a total of \$24,696, the motion appears tantamount to a motion for a hardship discharge.

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

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

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

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

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

2. [12-23306](#)-C-13 EDWARD/JUSTINA BONNAFON
CYB-4 Candace Brooks

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BROOKS/CARPENTER
FOR CANDACE Y. BROOKS, DEBTORS'
ATTORNEY(S)
8-18-15 [[58](#)]

Final Ruling: No appearance at the September 22, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Committee of Creditors Holding General Unsecured Claims/ or creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on August 18, 2015. 28 days' notice is required. That requirement was met.

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

The Motion for Allowance of Professional Fees is granted.

Candice Y. Brooks, the Attorney for Debtors, ("Applicant") for Edward and Justina Bonafon, ("Clients"), makes an Second Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January, 2012 through August, 2015. Applicant requests the amount of \$3,139.58 in additional fees.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

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

FEES AND COSTS & EXPENSES REQUESTED

Fees and Costs

Applicant received a retainer in the amount of \$1,750 at the outset of the case. In the retainer, Debtors agreed that the fee for legal services in connection with this case would be \$3,500.

This motion seeks in additional fees \$3,139.58 for the unanticipated post-confirmation services related to the death of co-debtor Edward Bonnafon: 1) notice of death; 2) omnibus motion for further administration of the case; 3) motion to modify.

The customary hourly rate for services is \$275. The total number of hours expended in this case for which the applicant seeks compensation is 24.40 hours of which 13.15 were anticipated and 11.25 which were unanticipated.

The Chapter 13 Trustee filed a statement of nonopposition on August 26, 2015.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$3,139.58
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The court shall issue an order substantially in the following form holding that:

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

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

IT IS ORDERED that Candice Y. Brooks is allowed the additional fees in the amount of \$3,139.58 a professional of the Estate.

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

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

Below is the court's tentative ruling.

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

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

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

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

Prior Hearing

At the hearing on August 11, 2015, the parties agreed to continue the matter to September 22, 2015 due to substitution of attorney.

Trustee's Opposition

The Chapter 13 Trustee opposes confirmation on the following grounds:

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

Discussion

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

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

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

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

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

4. [15-24317](#)-C-13 RICHARD/TANYA GATES
DPC-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-8-15 [[14](#)]

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

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

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

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

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

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

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

Prior Hearing

At the hearing on August 11, 2015, the parties agreed to continue the matter to September 22, 2015 due to substitution of attorney.

Trustee's Opposition

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

1. Debtor did not appear at the First Meeting of Creditors held on July 2, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The Trustee's report of the continued First Meeting of Creditors states that the Debtor did not appear at that continued meeting. July 30, 2015 Docket Entry Report.

2. Debtor is \$251 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$251 is due on July 25, 2015. Debtor has paid \$0.00 into the plan to date.

Discussion

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

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

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

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

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

Also #6

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 26, 2015. Fourteen days' notice is required. That requirement was met.

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

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

1. The plan relies on the motion to value collateral of GM Financial, which is set for hearing on September 15, 2015.

The docket reflects that no hearing has been held for debtor's pending motion to value collateral of GM Financial (Dkt. 19).

The court has considered the Trustee's concerns and finds them legitimate. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Tentative Ruling: The 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 25, 2015. 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 -----
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The court's decision is to sustain the Objection.
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Harley Davidson Motor Corp. opposes confirmation of the Plan on the basis that the Plan does not provide for secured creditor's claim in the amount of \$17,774.22.

Debtor's Opposition

Prior to the filing of the petition, secured creditor repossessed its collateral, a 2008/ Harley-Davidson FLHTCU Ultra Classic Electra G. As the motorcycle had been repossessed, Debtor and his counsel were under the assumption that the motorcycle had been sold and, if anything, Debtor owed a deficient balance to creditor, thus creditor was listed in Schedule F. Subsequently, creditor filed its aforementioned claim in the amount of \$17,774.22. Debtor will be filing an objection to claim.

Discussion

The docket reflects that debtor filed an objection to claim, which is set for hearing on October 20, 2015, at 2:00 p.m. The court would like to resolve the dispute over the claim before confirming the Plan. Thus, the Objection is sustained.

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 Harley Davidson Motor Corp. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Confirm Termination of 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 and Debtor's Attorney on September 8, 2015. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to xxxx the Motion to Confirm Termination of Stay.

SUMMARY OF MOTION

WF Homeowners Association, Inc., Movant and secured creditor herein, moves the Court for an order, pursuant to 11 U.S.C. §362(j), confirming that the automatic stay terminated on 9/4/15 pursuant to 11 U.S.C. §362(c) (3) so that Movant may proceed with the foreclosure of it's homeowners association lien against Debtor's residence at 833 Vassar Drive, Vacaville, CA 95687.

Debtor filed a Chapter 13 in this Court on 8/4/13, Case No. 13-30311, which stayed the foreclosure of her residence by Movant, which was set for 8/6/13. Debtor converted the case to one under chapter 7 on 9/29/13. The case was closed on 1/15/14 without a discharge due to Debtor's failure to pay the Court's filing fee and take the financial management course. Debtor filed a motion to reopen the case and filed her financial management certificate on 1/17/14 . The Court granted the motion to reopen the case on 3/12/14. The Court

issued the discharge order on 3/19/14. A copy of the Court's docket for this case is filed as Exhibit B.

Debtor filed a Chapter 13, Case No. 15-23332, on 4/23/15. That case was dismissed on 7/26/15. A copy of the Court's docket for that case is filed as Exhibit F. A copy of the Civil Minute Order dismissing the case is filed as Exhibit G.

Debtor filed this case on 8/5/15 which stayed the foreclosure sale on the homeowners association lien set for 8/11/15. Debtor did not file a motion to extend the stay as required by 11 U.S.C. §362(c)(3). A copy of the Court's docket in this case as of 9/8/15 is filed as Exhibit H.

DISCUSSION

11 U.S.C. §362(c)(3) states: if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)- (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

It is this court's view that § 362(c)(3) applies to the debtor, the debtor's property, but not to property of the estate. Accordingly, the stay has not terminated as to the property of the estate commonly known as 833 Vassar Drive, Vacaville, California. In order to commence foreclosure on the subject property while the automatic stay is in effect, movant must obtain relief from the automatic stay.

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 of Stay filed by the WF Homeowners Association, Inc. 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 automatic stay pertaining to property of the estate in case number 15-26234 is not terminated as of September 4, 2015.

8. [14-20452](#)-C-13 DAVID/NANCY VENABLE
DPC-1 Lucas Garcia

CONTINUED MOTION TO DISMISS
CASE
7-30-15 [[76](#)]

Also #9

Final Ruling: No appearance at the September 22, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2015. 28 days' notice is required. This requirement was met.

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

The Motion to Dismiss is continued to October 20, 2015 at 2:00 p.m.
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PREVIOUSLY

This matter was originally on calendar on September 9, 2015. The court continued the motion to take place concurrently with a Motion for Hardship Discharge, set for hearing today.

SUMMARY OF MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$5,654 with the last payment received May 07, 2015. Trustee shows \$8,884 is due, and thus debtor is delinquent \$3,230 in plan payments. Debtor's monthly payment is \$602. Prior to the hearing, an additional \$602 will become due, and as a result debtor will need to pay \$3,832 to be current by the hearing.

DEBTORS' RESPONSE

Debtors respond to Trustee's motion, stating that they believe that every effort to cure the arrears have been made. As such, Debtors state that given that their hardship has caused the delinquency, Debtors have submitted a request for hardship discharge filed on August 20, 2015.

DISCUSSION

The court docket reflects that Debtors have filed a Motion for Hardship Discharge, filed August 21, 2015. Dckt. 85. The court's decision is to continue the instant motion to take place concurrently with the Motion for Hardship Discharge. The court having continued the Motion for Hardship Discharge to permit time for supplemental briefing, the court will continue this motion to the same date and time.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to October 20, 2015 at 2:00 p.m.

Final Ruling: No appearance at the September 22, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 21, 2015. 28 days' notice is required. This requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 for Hardship Discharge is continued to October 20, 2015 at 2:00 p.m.
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REVIEW OF MOTION

Debtors David Lynn Venable and Nancy Lorraine Venable, ("Movant") seek a hardship discharge pursuant to 11 U.S.C. § 1328(b). Debtors are at the time of filing this motion in the 18th month of their 60 month plan. Debtors state that during this case, Joint Debtor retired in the normal course of business and now makes approximately 50% of what she made previously as an employed individual. Shortly after retirement, Joint Debtor Nancy Lorrain Venable was diagnosed with breast cancer.

Joint Debtor David Lynn Venable no longer receives income from Lake Wild Association and is collecting disability income. He makes approximately \$964 per month according to his \$241 weekly disability check. Once his disability is depleted, Debtor will be physically unable to return to the workforce. Debtor is on disability for an undetermined length of time and it is difficult to foresee when this temporary income will stop and he will no longer have income.

Debtors state that they have adjusted their schedules to reflect the above, and that they have amended their expenses to reflect increased maintenance to their home of \$70 per month, and increase for out-of-pocket medical from \$25 to \$125 per month, an increase in transportation from \$150 to \$450 to reflect visits to the doctor, etc., an increase in life insurance policy from \$175 to \$250, and health insurance increase to \$200 per month.

Debtors further state that they have already provided more to unsecured creditors through the plan than they would have received in a chapter 7 liquidation. Debtors state that a plan modification is not practicable because Joint Debtors' income has been reduced and will soon be depleted once disability checks are no longer income, and expenses have rapidly escalated due to the recent cancer diagnosis. Debtors were already living under a difficult income structure with little room to make decreases.

TRUSTEE'S OPPOSITION

The Trustee does not object to the Debtor's request for hardship discharge so long as Debtors are able to address Trustee's concerns. Trustee believes Debtors meet the requirements of 11 U.S.C. § 1328(b)(1), and here object so that Debtor can prove that a modification is not practicable under 11 U.S.C. § 1328(b)(3). Trustee requires that Debtor fully explain and detail the increase in expenses provided to in the motion and amended schedules, and why Mr. Venable is unable to return to work once his disability is depleted, and it does not appear that Debtors have attempted to determine the length of time Debtor will be receiving disability benefits.

DISCUSSION

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

The court agrees that Movant has not provided sufficient evidence regarding 11 U.S.C. § 1328(b)(3): modification of the plan is not possible under 11 U.S.C. § 1329. Debtors have not provided a satisfactory or comprehensive explanation of why Joint Debtor David Lynn Venable will not be able to return to work after disability benefits have been depleted, for how long he expects to receive those benefits, or an explanation as to the increase in expenses.

Based on the foregoing, the court will continue this motion for three week to permit Debtors additional time to submit a supplemental, explanatory briefing.

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

IT IS ORDERED that the Motion is continued to October 20, 2015 at 2:00 p.m.

IT IS FURTHER ORDERED that Debtors submit a supplemental,

explanatory brief by October 6, 2015 addressing Trustee's and the court's concerns, should they wish the court to consider it, and the Chapter 13 Trustee is ordered to file a responsive supplemental brief by October 13, 2015.

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

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

Below is the court's tentative ruling.

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

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

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

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

PREVIOUSLY

At the hearing, parties agreed to continue the hearing to 2:00 p.m. on September 22, 2015.

OBJECTION

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

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

1. Debtors are delinquent in plan payment, and therefore appear unable to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$6,422 under the terms of the proposed modified plan. According to the proposed modified plan, payments of \$155,044 have become due. Debtors have paid a total of \$148,622 to Trustee (85% of the plan payment is allocated to the home mortgage current and arrearage payments

and an estimated 7% to the Chapter 13 Trustee's fees) with the last payment posted on July 9, 2015 in the amount of \$5,590.

2. Debtors' proposed modified plan will be complete in 66 months, exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d). The over-extension appears to be due to claims coming in higher than anticipated and due to Debtors current delinquency under the confirmed plan of \$19,558.
3. Trustee is uncertain of the attorney's fees proposed in section 2.06 of the proposed modified plan. Section 2.06 states that \$1,750 in attorney's fees was paid prior to the filing of the case, with \$1,750 to be paid through the plan. Attorney's fees pursuant to the April 21, 2013 order confirming are \$4,000 with \$1,750 paid prior to the filing of the case and \$2,250 paid through the plan. Trustee has disbursed \$2,250 in attorney's fees.
4. Debtors' modified plan proposes to increase plan payments from \$5,606 to \$6,006, a \$400 increase. Debtors' motion and declaration and supplemental declaration do not provide any information as to how Debtors will be able to afford increased payments, and debtors have not filed amended schedules I and J relevant to current budget.

DISCUSSION

The Chapter 13 Trustee's concerns are well-taken. **Debtors are delinquent in plan payments, exceed the maximum amount of time allowed to complete a plan under 11 U.S.C. § 1322(d) by six months, and are unable to substantiate how they will be able to afford an additional \$400 in plan payments or filed amended schedules to reflect this proposed change.**

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 28 days' notice is required. This requirement was met.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid 47,984.48 with the last payment received May 27, 2015. Trustee shows \$65,945.48 is due, and thus debtor is delinquent \$17,961 in plan payments. Debtor's monthly payment is \$5,987. Prior to the hearing, an additional \$5,987 will become due, and as a result debtor will need to pay \$23,948 to be current by the hearing.

DEBTORS' RESPONSE

Debtors reply that they intend to be current on plan payments by the date of the hearing, and as such, request that the Trustee withdraw the motion.

DISCUSSION

The court continued the instant motion from hearing on September 9, 2015 to be heard concurrently with Creditor's Motion to Modify Plan. As of the date of hearing, Debtors are more than \$20,000 in default on plan payments.

Although Debtors have stated their intent to be current by the date of hearing, they have not provided evidence to the court that they are actually current. No testimony, or even argument by counsel, is provided as to why the

Debtor has defaulted in the payments. To date, no evidence has been presented that the Debtor has cured the delinquency. In contending that Debtor would be "current" by the time of the hearing, the Debtor fails (or refuses) to provide any testimony under penalty of perjury to such contention. Rather, it is merely an argument stated by Debtor's counsel. Further, Debtor offers no testimony or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income. The court is not here inclined to grant further continuances or permit Debtors additional time.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2015. Thirty-five days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Confirm the Modified Plan as moot, the case having been dismissed.

Creditor, Robert Guerra, is the largest unsecured creditor of the estate, and moves to amend the second amended plan of Debtors, stating that good cause exists to modify the plan because Debtors' actual income exceeds the income projected in the schedules and plan, and modification is appropriate to reflect this higher income.

Creditor states that Debtor Eduardo Ortega's income is nearly 25% greater than shown in the amended schedules, as revealed in documents pursuant to a subpoena for the first seven months of 2015. The actual difference is \$2,090 per month, and hence plan payments should be increased from \$5,987 to \$7,379, a difference increase of \$1,392 per month.

CHAPTER 13 TRUSTEE'S OBJECTION

The Chapter 13 Trustee objects to confirmation of Creditor's proposed Modified Plan for the following reasons. Creditor Robert Guerra proposes Debtors increase monthly plan payments due to the actual income of Eduardo Ortega, Jr., being much greater than the income projected in the schedules and plan. The gross income reflects \$62,019.02, which Creditor calculates to be \$8,860 per month. Debtors' amended schedule I shows gross income per month to be \$6,770. Based on this difference, Creditor proposes plan payments increase

\$1,392 per month.

1. Debtor is currently \$23,948 delinquent under the confirmed plan and \$35,92.52 delinquent under the proposed modified plan, an increase in the delinquent amount. Trustee filed a Motion to Dismiss on August 11, 2015.
2. 11 U.S.C. § 1325(a)(2) requires for confirmation that any amount required by the plan be paid before confirmation. While 11 U.S.C. § 1326(c) allows the court to order any entity from whom the Debtor receives income to pay all or part of such income to Trustee, even if the existing confirmed plan delinquency were cured by such an order, Trustee is not certain how the court can confirm a plan which proposes higher payments and will remain delinquent, can be brought current before confirmation.

CREDITOR'S RESPONSE

Creditor, Robert Guerra, replies to the opposition submitted by Chapter 13 Trustee. Chapter 13 Trustee's opposition effectively conceded that Debtors have considerably more after-tax income than acknowledged in their schedules.

Trustee objects on the basis that 11 U.S.C. § 1325(a)(2) requires that any amount due prior to confirmation under the plan be paid before confirmation. However, Creditor is unaware of any provision in 11 U.S.C. § 1329 that requires modified plan payments to be current under the modified plan prior to confirmation. Debtors should not be able to avoid a plan modification by their own malfeasance and the case should be dismissed with prejudice if chapter 13 Trustee is correct.

DEBTORS' RESPONSE

Debtors respond to the instant motion. Debtors and Debtors' counsel stat that they did not receive the plan or moving papers on this motion, and that they instead learned of this motion based on the filings and service by Trustee's opposition. Debtors request an order continuing the motion for four weeks to permit Debtors an additional two weeks to respond.

CREDITOR'S RESPONSE

Creditor points to a number of discrepancies in Debtors' position that they never received the instant motion's moving papers, and insist Debtors' counsel if lying to the court.

DISCUSSION

The court notes that Movant correctly served parties with the moving papers. The court agrees that Debtors' counsel's request for a month-long continuance on the basis that he had no notice of this motion is inconsistent with previous filings.

On September 16, 2015, less than one week prior to hearing on this motion, counsel informed the court that he had only recently learned of this motion by Trustee's opposition. Trustee filed his opposition on September 4, 2015, Dckt. 200, providing Debtors' counsel will sufficient time to effectively respond to this motion. Additionally, the court entered an order on August 17, 2015, Dckt. 198, continuing Trustee's motion to dismiss, Dckt. Control no. DPC-3, from September 9, 2015 to September 22, 2015 on the basis that this very motion was

set for hearing on September 22, 2015. The court has granted Trustee's Motion to Dismiss. The instant motion, thus, is denied as moot, the case having been dismissed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied as moot, the case having been dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

PREVIOUSLY

The court continued the matter from September 9, 2015, to permit Debtor additional time to prepare and file a modified plan by the date of hearing.

MOTION

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

1. Debtor did not provide for the priority claim of the Internal Revenue Service of \$1,995. This is a breach of the plan. Debtor was provided a Notice of Filed Claims on June 18, 2014, Dckt. 16, which listed this claim on Page 6 as a priority and not provided for in the plan, and indicated that a motion to modify was required.
2. Debtor does not appear to be able to make payments under 11 U.S.C. § 1325(a)(2). Debtors are delinquent \$745. Payments totaling \$14,700 have become due through July 25, 2015. Debtors have paid a total of \$13,955 with the last payment of \$780 posted August 10, 2015. Another payment of \$780 will become due August 24, 2015.

DEBTORS' RESPONSE

Debtors responds, explaining that Debtor Monay Lawrence has been placed on disability and is no longer receiving employment income. Debtors have thus experienced a lapse in income from the transition. Debtors and counsel are preparing a modified plan and motion to confirm plan to be set on the court's first available hearing date. Should Debtors and counsel be unable to file and serve the modified plan and motion to confirm plan prior to the date of hearing on the instant motion, Debtor request one additional week from the hearing date in which to file the modified plan.

DISCUSSION

The court docket reflects that no modified plan or motion to confirm has been filed or set for hearing. The case will be dismissed, and the motion granted.

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

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

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

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

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

14. [13-20091](#)-C-13 LEE KENT
DPC-2 Scott Johnson
8-11-15 [[56](#)]

CONTINUED MOTION TO DISMISS
CASE

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 28 days' notice is required. This requirement was met.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

PREVIOUSLY

The court continued the matter from September 9, 2015, to permit Debtor additional time to prepare and file a modified plan by the date of hearing.

MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis the Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$16,577.99 with the last payment received April 20, 2015. Trustee shows \$18,390 is due, and thus debtor is delinquent \$1,812.01 in plan payments. Debtor's monthly payment is \$613. Prior to the hearing, an additional \$613 will become due, and as a result debtor will need to pay \$2,425.01 to be current by the hearing.

DEBTOR'S RESPONSE

Debtor responds to Trustee's motion, stating that Debtor became unemployed in October 2014 and began to receive unemployment. Debtor is actively seeking new employment. Debtor and counsel are preparing a modified plan and motion to confirm, to be set on the court's first available hearing date. Should Debtor and counsel be unable to file and serve the modified plan, Debtor requests one additional week from the hearing date to file said

plan and motion.

DISCUSSION

The court docket reflects that no modified plan or motion to confirm has been filed or set for hearing. The case will be dismissed, and the motion granted.

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

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

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

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

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

Final Ruling: No appearance at the September 22, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2015. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on August 3, 2015 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [14-31199](#)-C-13 BRIAN LUMPKINS
DPC-2 Eric Schwab

OBJECTION TO CLAIM OF CONSUMER
PORTFOLIO SERVICES, CLAIM
NUMBER 11-1 AND 11-2
7-27-15 [[26](#)]

Final Ruling: No appearance at the September 16, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 27, 2015. 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 numbers 11-1 and 11-2 is sustained, and the claim is disallowed in its entirety.

The Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Consumer Portfolio Services Inc. ("Creditor"), Proof of Claim Nos. 11-1 and 11-2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$3,984.89. Objector asserts that the Claim has not been timely filed. *See Fed. R. Bankr. P. 3002(c)*. The deadline for filing proofs of claim in this case is March 18, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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).

Discussion

The deadline for filing a Proof of Claim in this matter was March 18, 2015. The Creditor's Proof of Claim was filed June 30, 2015. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

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

The court shall 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 Consumer Portfolio Services Inc., 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 Numbers 11-1 and 11-2 of Consumer Portfolio Services Inc. is sustained and the claim is disallowed in its entirety.

Continued b/c creditor appeared telephonically, but atty was late, so both parties didn't appear at the same time.

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 31, 2015. Forty-two days' notice is required. That requirement was met.

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

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

Creditor's Opposition

Bank of America, N.A. opposes confirmation on the following grounds:

Secured Creditor seeks clarification as to whether its senior lien for the 4793 Madrid Ridge Ct., Las Vegas, Nevada 89129 which has an Order approving Sale (Secured Creditor did not oppose) is being paid through Escrow or by the Chapter 13 Trustee pursuant to Plan Confirmation.

The Second Amended Plan appears to pay only \$200.00 a month on Secured Creditor's claim despite conflicting language regarding sale in the miscellaneous provisions.

Secured Creditor requests Court take Judicial Notice pursuant to Federal Rules of Evidence 201 regarding Debtor's Order on Motion to Sell (Dkt 132, Ex A) and incorporated herein by reference.

Secured Creditor seeks clarification in the Confirmation Order that the

Plan terms do not overturn the Order on Motion to Sell and Secured Creditor will be paid in full upon close of escrow.

Discussion

As the Creditor's concerns highlight, the Plan contains conflicting information regarding treatment of Creditor's claim. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtor is delinquent in plan payments under the proposed plan. Thirty-five payments have become due since this case was filed on October 26, 2012. The additional provisions propose plan payments of \$1,600 for months 1 through 22, \$1,670 for months 23 through 30, then \$1,860 for months 31 through 60. Under these terms, the Debtor would have needed to pay Trustee through August for a total of \$56,00. Debtor has actually paid a total of \$51,830 leaving a delinquency of \$4,170. The last sentence of the additional provisions states "The aggregate amount that shall be paid into the plan as of 6/17/15 will be \$50,160. Trustee's records reflect that through June the Debtor paid a total of \$50,160. In July, the thirty-fourth month, Debtor paid \$1,670 and no payments have been made in August to date. The Debtor appears delinquent \$2,050 under the proposed plan.

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

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

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

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

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