UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 21, 2015 at 10:00 a.m.

1.	10-41413-B-13 SS-2	WILLIAM/KATHLEEN BRADBURY Scott D. Shumaker	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 9-17-15 [43]

Final Ruling: No appearance at the October 21, 2015, hearing is required.

The Debtors' Reset Motion to Value Collateral of Wells Fargo Bank, N.A. ("Bank") On Debtors' Real Property Commonly Known As 9543 Castlecave Way, Elk Grove, CA 95758 ("The Property") has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The motion to value filed by Debtors to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 9543 Castlecave Way, Elk Grove, California ("Property"). Debtors seek to value the Property at a fair market value of $229,500.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

> use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed on August 30, 2010, by Wells Fargo Bank, N.A. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately $321,026.24. Creditor's second deed of trust secures a claim with a balance of approximately $80,234.98. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

2. 13-23313-B-13 JENNIFER JOHNSON
DJD-1 Mark A. Wolff

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-6-15 [57]

SETERUS, INC. VS.

Final Ruling: No appearance at the October 21, 2015, hearing is required.

Seterus, Inc. having filed a Withdrawal of Motion for Relief form Automatic Stay, them motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. 13-30720-B-13 LEILA MONDARES MOTION TO MODIFY PLAN
TJW-5 Timothy J. Walsh 8-27-15 [61]

Tentative Ruling: The Motion for Order to Confirm Second Modified Chapter 13 Plan Filed August 27, 2015, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the plan filed August 27, 2015, does not properly account for all payments the Debtor has paid to the Trustee to date. The Debtor has paid a total of $56,049.00 to the Trustee through July 25, 2015. Commencing August 25, 2015, monthly payments shall be $2,400.00 for the remainder of the plan.

Second, the Debtor is delinquent to the Trustee in the amount of $2,500.00, which represents approximately 1 plan payment. Debtor has not carried her burden of showing that the modified plan complies with 11 U.S.C. § 1325(a)(6).

Third, the modified plan does not specify a cure of the post-petition arrearage due to Caldwell Banker Mortgage/PHH Mortgage including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee therefore cannot fully comply with § 2.08(b) of the plan.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

4. 14-31324-B-13 SJS-1 — WILLIAM ROBERTS AND ROXANNE WHITE — Scott J. Sagaria — MOTION TO MODIFY PLAN 9-10-15 [22]

Tentative Ruling: The Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtors are delinquent to the Trustee in the amount of $1,074.00, which represents approximately 1.06 plan payments. The modified plan proposes an increase in monthly plan payments form $960.00 to $1,017.00 beginning August 25, 2015. The Debtors paid the Trustee only $960.00 for the plan payment due on August 25, 2015, and have not yet made the plan payment that was due on September 25, 2015. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, feasibility of the plan cannot be assessed. The modified plan filed on September 10, 2015, provides treatment for post-petition tax debt to the Franchise Tax Board in Class 5. Unless the creditor elects to file a post-petition claim under 11 U.S.C. § 1305 for the tax year 2004, the modified plan will not pay these taxes. To date, the creditor has not filed a proof of claim for the post-petition tax debt.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

5. 15-24335-B-13 BENJAMIN BARNES AND JENNIFER VARELA-BARNES
PGM-1 Peter G. Macaluso

MOTION TO CONFIRM PLAN
9-3-15 [35]

Tentative Ruling: The Motion to Confirm Debtors' First Amended Plan filed on September 3, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan provided that the Trustee confirms receipt of Debtors' pay stubs, has reviewed them against the means test, and does not object to confirmation of the plan.

Provided that the aforementioned are satisfied, the amended plan will be deemed to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

6. 15-25844-B-13 SHAHID IQBAL
CAL-1 Scott M. Johnson

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
9-21-15 [37]

MIDAS REALTY CORPORATION VS.

Tentative Ruling: The Creditor Midas Realty Corporation's Notice of Motion and Motion for Relief from the Automatic Stay or For Order Confirming that the Automatic Stay Does Not Apply under 11 U.S.C. § 362 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the motion for relief from stay.

Midas Realty Corporation ("Movant") seeks relief from the automatic stay with respect to the leased property commonly known as 1250 East Monte Vista, Vacaville, California (the "Property"). The Property serves as the location of a Midas shop franchise operated by SAI LLC, to which Debtor has a partial ownership interest. SAI LLC, and not the Debtor, is the tenant on the premises and has failed to pay rent. The Debtor has listed the Property in his petition as his principal place of residence when it is in fact a commercial auto shop. Movant has provided the Declarations of James E. Doliber and Todd C. Bouton to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Creditor asserts that there are 2 post-petition defaults, with a total of $12,030.62 in post-petition payments past due. Additionally, there are 8 pre-petition payments in default, with a total of $41,826.54 in pre-petition payments past due. Due to unpaid rent, Creditor terminated the sublease, franchise agreement, and SAI LLC's rights under the sublease (Dkt. 41, Exh. D, E). Creditor served SAI LLC with an unlawful detainer action complaint on June 25, 2015 (Dkt. 43, Exh. A), and on July 16, 2015, the Solano County Superior Court entered a default judgment in favor of Creditor pre-petition (Dkt. 43, Exh. D).

Opposition by Debtor

Shahid Iqbal ("Debtor") objects to the motion and states that he will tender to Creditor, prior to the hearing on the instant motion, all delinquent post-petition lease payments to cure the default. Debtor alternatively requests that the court enter into an adequate protection order with Creditor to address the delinquent payments over a 6-month period.

Discussion

The court maintains the right to grant relief from stay for cause when a 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, including defaults in post-petition payments which have come due and remain unpaid. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property and it is not necessary to an effective reorganization. The Property is not Debtor's principal place of residence but rather a commercial auto

shop. Additionally, the Debtor is not a tenant on the Property. Moreover, SAI LLC, to which Debtor holds partial ownership interest, could not have any equity in the lease since its interest in the Property was terminated on May 6, 2015 (Dkt. 41, Exh. E).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. 12-32245-B-13 CAROLE ARBUCKLE MOTION TO INCUR DEBT
RAC-5 Richard A. Chan 10-6-15 [77]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Authorize the Debtor to Incur Post-Petition Debt, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion and authorize the Debtor to incur post-petition debt.

The motion seeks permission to enter into an agreement with TKD Investments, LLC to borrow $115,000.00. The collateral for the loan will be the non-residential property located at 5009 12th Avenue, Sacramento, California ("Property"). The loan will be interest only from the date of the Promissory Note, until maturity 5 years from the date of the Promissory Note, at the rate of 8% per annum; principal and all unpaid interest payable at maturity with the initial monthly payments being $766.67. Additionally, the Debtor has entered into an agreement to lease the Property. The base lease payments will be in the amount of $1,200.00 and will provide the Debtor with funds necessary to pay under the Promissory Note. Debtor asserts that incurring this post-petition debt will allow her to pay 100% of all general unsecured claims.

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

8. 13-30052-B-13 KEVIN BRACY
BLG-6 Pro Se

MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP FOR PAULDEEP BAINS, DEBTORS ATTORNEY(S)
9-22-15 [108]

Final Ruling: No appearance at the October 21, 2015, hearing is required.

Pauldeep Bains' First and Final Motion for Compensation in the Amount of $1,930.00 and Reimbursement of Cost in the Amount of $37.06 for an Aggregate of $1,967.06 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to deny without prejudice the motion for compensation.

FEES AND COSTS REQUESTED

As part of confirmation of the Debtor's Chapter 13 plan, the Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). On January 7, 2014, the court authorized payment of fees and costs totaling $3,500.00 (Dkt. 58, "Order Confirming"). However, the Disclosure of Compensation of Attorney for Debtor filed on July 31, 2013, indicates total fees of $4,000.00. Applicant's present motion supports the fees listed in the petition and states that the agreed fees were $4,000.00 with $500.00 received as a retainer and $3,500.00 having already been paid by the Chapter 13 Trustee through the plan. The Applicant now seeks additional compensation in the amount of $1,930.00 in fees and $37.06 in costs. How the Applicant calculates fees of $1,930.00 is unclear, and the court finds that the costs actually calculate to $30.98 and not $37.06.

Applicant provides a task billing analysis and supporting evidence of the services provided (Dkt. 111).

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

The court finds that it was unanticipated for the Debtor to surrender his vehicle while being unable or unwilling to give its location, thus prompting a 2004 Exam. However, the task billing statement appears to include the entire scope of work performed on behalf of the Debtor's bankruptcy from even before the Debtor filed his petition. The task billing statement does not indicate which work was substantial and unanticipated or how this work calculates to $1,930.00. It is not the responsibility of the court to comb through the docket of the case and billing records to determine the scope of services performed in an effort to justify the Applicant's request. Accordingly, the motion for additional compensation is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

9. 15-25764-B-13 MAX/NATALIA GULKO — COUNTER MOTION TO DISMISS CASE
MS-5 Mark Shmorgon — 9-30-15 [45]
Thru #10

Tentative Ruling: The motion will be conditionally denied.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

10. 15-25764-B-13 MAX/NATALIA GULKO — MOTION TO CONFIRM PLAN
MS-5 Mark Shmorgon — 9-3-15 [35]

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

The court's decision is to not confirm the first amended plan.

The Debtors are delinquent to the Trustee in the amount of $150.00, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. 11-38269-B-13 CATHERINE WIESER
TJW-3 Timothy J. Walsh

OBJECTION TO CLAIM OF EMPLOYMENT DEVELOPMENT DEPT., CLAIM NUMBER 18
9-1-15 [88]

Tentative Ruling: The Debtor's Objection to Claim of Employment Development Dept. Claim #18 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. 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.

The court's decision is to sustain in part the objection to Claim Number 18 of Employment Development Department and disallow the claim except to the extent of disbursements of $10,472.25 made by the Chapter 13 Trustee prior to the filing of the objection.

Catherine Wieser ("Objector"), requests that the court disallow the claim of Employment Development Department ("Creditor"), Claim Number 18. The claim is asserted to be priority in the amount of $20,016.17. Objector asserts that the claim is a duplicate of Employment Development Department Claim Number 17, filed December 22, 2011. Debtor asserts that she filed Claim Number 18 on behalf of the Employment Development Department because she believed that the creditor had not filed its claim. The duplicate claim was brought to the attention of Debtor's counsel by the Trustee on August 31, 2015.

The Chapter 13 opposes the Debtor's objection to claim to the extent that the Trustee would be required to recover $10,472.25 in disbursements that were properly made to this creditor in accordance with the confirmed plan and the timely filed proof of claim. The Notice of Filed Claims was filed and served on the Debtor and the Debtor's attorney on August 17, 2012. This notice showed two separate and distinct proofs of claim for Employment Development Department. The Debtor and the Debtor's counsel knew or should have known that there were two proofs of claim when they received the notice.

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). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that Proof of Claim Number 18 is a duplicate of Claim Number 17. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed except to the extent of disbursements of $10,472.25 made by the Chapter 13 Trustee prior to the filing of the objection. The objection to the Proof of Claim No. 18 to the extent provided herein is sustained in part.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. 10-44175-B-13 EANAD LOTT
ET-4 Matthew R. Eason

OBJECTION TO CLAIM OF CENTRAL MORTGAGE COMPANY, CLAIM NUMBER 5-2
9-3-15 [92]

Final Ruling: No appearance at the October 21, 2015, hearing is required.

The Debtor's Objection to Claim No. Claim No [sic] 5-2 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The matter has been resolved by stipulation and an order granting the stipulation was entered on October 9, 2015. The Objection to Claim is deemed resolved.

The court shall enter an appropriate civil minute order consistent with this ruling.

13. 15-25582-B-13 ASHWANI MAYER AND POOJA VERMA
Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FRESHKO PRODUCE SERVICES, INC.
8-27-15 [17]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan by PACA Trust Creditor Freshko Produce Services Inc.; Memorandum of Points and Authorities In Support Thereof was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Freshko Produce Services, Inc. ("Creditor") objects to confirmation on the ground that the Debtors committed fraud or defalcation while acting in a fiduciary capacity as contemplated by 11 U.S.C. § 523(a)(4), and that the plan is not proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

Creditor and Debtors entered into a sales transaction in which Creditor sold and shipped perishable agricultural goods to Debtors. Creditor asserts that these sales transactions fall within the Perishable Agricultural Commodities Act ("PACA"). Creditor asserts that as PACA sale transactions, its claims have priority over all other secured, unsecured, and administrative claims; that its trust assets are not part of the bankruptcy estate; and that the Debtors' plan is not proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3).

Congress has given PACA claims, such as Creditor's claim, special status and protection both inside and outside a bankruptcy case. These PACA claims are not simply "general unsecured claims" that may be dumped into the unsecured class and paid pro rata with other unsecured creditors as the Debtors have done in this case. If the Debtors believe otherwise, and have a good faith argument to support their belief, the burden is on them as the plan proponents to support their proposed treatment of the Creditor's PACA claim as a general unsecured claim as proposed. A plan that ignores the special nature of these PACA claims is a plan that is not proposed in good faith.

Response by Debtors

Debtors do not dispute that there was a PACA trust but appear to argue that Creditor is not entitled to full payment of its PACA claim because the Debtors had surrendered the produce inventory in another Chapter 7 bankruptcy filed by Debtors' former business A.L.L. Groups, Inc. (Case No. 15-21850, pending before the Hon. Michael S. McManus), the Creditor's Proof of Claim No. 7-1 lists the claim of $49,979.54 as "unsecured," and the Debtors' plan provides for Creditor's Class 7 claim.

Response by Creditor Freshko Produce Services, Inc.

Creditor disagrees with Debtors assertion that surrendering the produce inventory vitiates Creditor's right to full payment of its PACA claim or insulates Debtors from personal liability for this claim. Creditor argues that Debtors were obligated to preserve the trust assets under Debtors' control – including the surrendered inventory – for the benefit of Creditor as a PACA trust beneficiary. Furthermore, Creditor asserts that the act of surrendering the inventory was, in itself, a violation of the Debtors' fiduciary duties as a PACA trustee. *See, In re Nagelberg & Co., Inc.*, 84 B.R. 19 (Bankr. S.D. NY 1988), which states that dissipation of PACA trust assets violates PACA and that dissipation results from "*any* act or failure to act which *could* result in the diversion of such assets or which *could* prejudice or impair the ability of unpaid suppliers, sellers, or agents to recover money owed in connection with produce transactions." Emphasis added. *See also*, 7 C.F.R. §46.46 (b)(2). The court finds that the surrendering of PACA trust assets qualifies as dissipation.

With regard to the Proof of Claim's "claim type," the court finds that the Debtors are correct in stating that Creditor's Proof of Claim No. 7-1 lists the claim of $49,979.54 as "unsecured." However, the proof of claim also states that the nature of the claim is "Sale of Produce under PACA." Judicial decisions have consistently affirmed that a PACA Trust Beneficiary's trust claim has priority over other secured and unsecured claim. *See, In re Monterey House Inc.* 71 B.R. 244, 247 (Bankr. S.D. Texas 1986); In re Milton Poulos Inc., 947 F.2d 1351 (9th Cir. 1991). *See also, In re Prange Foods Corp.*, 63 B.R. 211 (Bankr. W.D. Mich. 1986); *Fresh Approach II* 51 B.R. 412 (Bankr. N.D. Texas 1985) (stating that to approve a plan which grants anything but a priority would be a direct contravention of the purpose and intent of the PACA amendments). The Creditor is free to amend its proof of claim to reflect a "priority" status prior to the expiration of the bar date, which in this case is November 18, 2015.

Since the Debtors' plan filed July 13, 2015, does not provide for the full payment of this priority claim, 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 enter an appropriate civil minute order consistent with this ruling.

14. 15-24115-B-13 TERRICINA MIMS
TAG-3 Ted A. Greene

CONTINUED AMENDED MOTION FOR COMPENSATION BY THE LAW OFFICE OF TED A. GREENE DEBTOR'S ATTORNEY(S)
9-25-15 [64]

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

The court's decision is to deny without prejudice the motion for compensation.

FEES AND COSTS REQUESTED

Ted A. Greene ("Applicant"), the attorney to Chapter 13 Debtor Terricina Mims ("Client"), makes a request for the allowance of $1,720.00 for services performed in negotiating a short sale of real property located at 10 Smokey Leaf Court, Sacramento, California. The Applicant states that the $1,720.00 will be paid by the purchaser of the real property and not by the Debtor.

Additionally, the Applicant seeks payment of $2,460.00 to be paid by the Chapter 13 Trustee through the plan. The Applicant states that he had agreed to represent Debtor at the total compensation of $4,000.00, of which $1,540.00 was paid prior to the filing of the petition. The Applicant states that the balance of $2,460.00 is to be paid through the plan.

A review of the application shows that the Applicant does not provide a task billing analysis or supporting evidence of the services provided. Moreover, a review of the petition and schedules shows that the Applicant has not filed a Disclosure of Compensation of Attorney for Debtor. The court cannot grant the motion until the Applicant has provided additional evidence of services performed and has filed the Disclosure of Compensation of Attorney for Debtor.

The court shall enter an appropriate civil minute order consistent with this ruling.

15. 15-25417-B-13 GERALD FILICE — CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-2 Pro Se — 8-26-15 [29]

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

The court's decision is to overrule the objection.

The Trustee objects to the Debtor's claim of exemption in the amount of $175,000.00 using California Code of Civil Procedure § 704.140(a)(3)(C). The Trustee asserts that the Debtor's and Debtor's spouse's gross monthly income is $3,593.00, which would result in a gross yearly income in the amount of $43,116.00. The Trustee states that this exceeds the exemption limit of no more than $35,000.00 if married.

In response, Debtor asserts that the measurement of income to qualify for this exemption is over the 12 months preceding the bankruptcy filing. Debtor states that he and his wife had an income average of $1,511.00 per month during the last six months of 2014, and per Schedule I an average of $3,593.00 per month during the first six months of 2015. These numbers lead to an average monthly income of $2,552.00 over the 12 months preceding the bankruptcy, or $30,626.00 per year. This is below the $35,000.00. The Trustee's objection is overruled and the claimed exemption is allowed.

The court shall enter an appropriate civil minute order consistent with this ruling.

16. 14-21394-B-13 PATRICK/SUZANNE CLARK
PP-2 W. Scott de Bie
Thru #17

CONTINUED MOTION TO CLARIFY PROCEDURES GOVERNING MOTION TO APPROVE VALUATION AND TRANSFER OF STOCK PURSUANT TO CONFIRMED PLAN, MOTION TO EXTEND TIME AND/OR MOTION FOR DETERMINATION THAT THE PENDING MOTION IS A NON-CORE PROCEEDING
9-16-15 [144]

Tentative Ruling: The court issues no tentative ruling.

The Continued Motion to Clarify Procedures Governing Motion to Approve Valuation and Transfer of Stock Pursuant to Confirmed Chapter 13 Plan; Alternatively Motion to Enlarge Time for Removal; Request for Determination that Proceeding is Non-Core has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court will enter a written decision prior to the hearing on this matter.

17. 14-21394-B-13 PATRICK/SUZANNE CLARK
PP-3 W. Scott de Bie

CONTINUED MOTION TO EXTEND TIME TO APPEAL UNDER RULE 8002(C)
9-23-15 [148]

Tentative Ruling: The court issues no tentative ruling.

Because less than 28 days' notice of the hearing was given, the Continued Motion to Extend Time for Appeal of Order Denying Motion to Approve Valuation and Transfer of Stock Pursuant to Confirmed Chapter 13 Plan is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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.

The court will enter a written decision prior to the hearing on this matter.