UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 27, 2015 at 3:00 p.m.

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1. 15-27101-E-13 SNM-1 — PEDRO/MARISSA FERNANDES — Stephen N. Murphy — MOTION TO VALUE COLLATERAL OF U.S. BANK, N.A. — 9-24-15 [16]

Final Ruling: No appearance at the October 27, 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, and Office of the United States Trustee on September 24, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of U.S. Bank National Association as Trustee, its assignees and/or successors in interest ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Pedro B. Fernandes and Marissa D. Fernandes ("Debtors") to value the secured claim of U.S. Bank National Association as Trustee, its assignees and/or successors in interest ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 69 Chesley Court, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $224,400.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut.*

Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

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

No Proof of Claim Filed

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $229,135.00. Creditor's second deed of trust secures a claim with a balance of approximately $58,764.00. 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 issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil

Minutes for the hearing.

The Motion for Valuation of Collateral filed by Pedro B. Fernandes and Marissa D. Fernandes ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of U.S. Bank National Association as Trustee, its assignees and/or successors in interest secured by a second in priority deed of trust recorded against the real property commonly known as 69 Chesley Court, Vallejo, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $224,400.00 and is encumbered by senior liens securing claims in the amount of $229,135.00, which exceed the value of the Property which is subject to Creditor's lien.

2. 15-23902-E-13 JOHN/MELISSA RUS
DPC-1 Cindy Lee Hill

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-23-15 [20]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 23, 2015. By the court's calculation, 28 days' notice was provided. 14 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection to Confirmation.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the pending plan relies on the Motion to Avoid Lien of Waldorf School/Northern California Collection Services, Inc. The Motion to

Avoid Lien is set for hearing on July 21, 2015 at 3:00 p.m.

On July 21, 2015, the court denied without prejudice the Motion to Avoid Lien.

JULY 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 15, 2015. Dckt. 28.

SEPTEMBER 15, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on September 22, 2015 to be heard in conjunction with the Debtor's Motion to Avoid Lien or to Value Collateral of Northern California Collection Services, Inc.

SEPTEMBER 22, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 27, 2015. Dckt. 52

DISCUSSION

On October 20, 2015, the court granted the Debtor's Motion to Avoid Lien of Northern California Collection Services, Inc.

With the Motion to Avoid granted and the lien of Northern California Collection Services, Inc. avoided, the Trustee's objection is overruled.

With no further objections pending and the court's own review of the Plan, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 13, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

3. 15-26710-E-13 ROBERTO RAMIREZ **MOTION TO EXTEND AUTOMATIC STAY**
Pro se **10-1-15 [44]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Nationstar Mortgage, parties requesting special notice, and Office of the United States Trustee on September 29, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Extend the Automatic Stay is denied.

Roberto Ramirez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

This is the Debtor's third Motion to Extend the Automatic Stay in this bankruptcy case. The instant case was filed on August 25, 2015. On August 26, 2015, the Debtor filed an *ex parte* Motion to Extend the Automatic Stay. Dckt. 9. The court issued a Memorandum Opinion and Decision Denying Motion to Extend Automatic Stay 11 U.S.C. § 362(c)(3)(B) and accompanying Order denying the Motion on August 28, 2015. Dckt. 11, 12. The court went into great detail explaining the Debtor's prior bankruptcy cases (this being the Debtor's fifth bankruptcy since 2011). The court, after discussing the Debtor's prior

bankruptcy and the *ex parte* Motion, the court found that the Debtor did not rebut the presumption of bad faith. However, the court did state in the order that if the "Debtor seeks further relief in this case to extend the automatic stay shall be noticed motion, with a hearing set as provided in Local Bankruptcy Rule 9014-1(f) or pursuant to an order of the court shortening time so that the initial hearing can be conducted within the thirty-day period specified in 11 U.S.C. § 362(c)(3)(A)." Dckt. 11.

The case was then dismissed on September 14, 2015, for failure to timely file documents. Dckt. 22.

On September 23, 2015, the court granted the Debtor's Motion to Vacate the Dismissal. Dckt. 29.

On September 24, 2015, the Debtor once again filed an *ex parte* Motion to Extend the Automatic Stay Pursuant to 362(C)(3)(B). The court issued an order denying the Motion on September 28, 2015. Dckt. 39. The court reiterated that the Debtor failed to rebut the presumption of bad faith and denied the Motion. Dckt. 39.

The Debtor filed the instant Motion on October 1, 2015. Dckt. 44. The majority of the Motion appears to be identical to the one filed on September 24, 2015, with the addition of aspects to the Debtor's history.

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 14, 2015. Dckt. 54. The Trustee states that the instant Motion was filed 37 days after the commencement of the instant case. The Trustee states that the language of 11 U.S.C. § 362(c)(3)(B) requires that the Debtor obtain an order extending the automatic stay within 30 days of the start of the case.

Additionally, the Trustee states that the Debtor failed to comply with Local Bankr. R. 9014-1(c) because the Debtor failed to contain a Docket Control Number.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor has filed the instant Motion after thirty days of the filing of the instant case. Based on the plain language of 11 U.S.C. § 362(c)(3)(B)(4), the Debtor's Motion is untimely.

Even if the Debtor's Motion was timely, and an order could have been entered within the thirty days from the time of filing which passed on September 25, 2015, the Debtor once again failed to rebut the presumption of bad faith. The Debtor does not provide any argument or evidence outside of the want to protect his current residence why the instant case is filed in good faith. See Dckts. 12 and 39.

Therefore, because the instant Motion was filed after thirty days since the case was filed, the motion is denied with prejudice.

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

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

4. 15-21711-E-13 CHARLES/AMBER ARNEY — MOTION TO CONFIRM PLAN
DAO-2 Dale A. Orthner — 9-15-15 [42]

Final Ruling: No appearance at the October 27, 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 September 15, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 15, 2015 is confirmed.

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

5. 14-20512-E-13 PGM-4 | **VIRAB/EVA ABRAMYAN Peter G. Macaluso** | **OBJECTION TO CLAIM OF QUANTUM3 GROUP, LLC, CLAIM NUMBER 13 9-9-15 [91]**

Final Ruling: No appearance at the October 27, 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 13 of Quantum3 Group, LLC as agent for Galaxy Asset Purchasing LLC is sustained and the claim is disallowed in amounts in excess of $839.01.

Virab and Eva Abramyan ("Debtor") requests that the court disallow the claim of Quantum3 Group, LLC as agent for Galaxy Asset Purchasing LLC ("Creditor"), Proof of Claim No. 13-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $8,782.07. Debtor asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the

contract or four years from the date the last payment was made under the contract. The Debtor states that according to the Proof of Claim, the last transaction date and charge off date was August 4, 2010. The date of last payment on the Statement of Account Information attached to the Proof of Claim states the last payment date is "not applicable."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on October 16, 2015. Dckt. 115. The Trustee requests that if the claim objection is sustained, the claim be allowed in the amount of $839.01 which is the amount already disbursed to the Creditor by the Trustee.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's response on October 20, 2015. Dckt. 118. The Debtor states that they agree that the claim should be reduced to the amount already disbursed by the Trustee.

DISCUSSION

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).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extension of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> (c) Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is

> protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 13 does not list the Debtor's last payment but does affirmatively state August 4, 2010 as the "charge off date." **This is also stated to be the "last transaction date." The Debtor Eva Abrayan's declaration states that she "did not make any payments on this account a year before they charged off the account, sent this to collection agencies after this account was charged off.** As such, [Debtor] did not make any payments on this account after 2009." Dckt. 93. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental of credit transactions is commonly known by both creditors and consumers alike.)

Giving Creditor the benefit of the doubt based on Debtor's testimony, no payment or other transaction occurred after December 31, 2009. Thus, the four year statute of limitations expired on January 1, 2014.

This bankruptcy case was filed on January 20, 2014 - a mere nineteen days after the statute of limitations expired. But it is after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Here, the Trustee disbursed $839.01 to the Creditor prior to the instant Objection. The Trustee, and the Debtor, request that the claim be disallowed in excess of this amount.

While the Debtor may have the duty to get these funds back from the Creditor due to the claim being disallowed, the de minimis amount distributed to the Creditor would cause the estate and Debtor to incur more in attorney's fees and motion fees than would be recovered. Therefore, the court will disallow the claim in the amount excess of $839.01.

Therefore, based on the evidence before the court, the Creditor's claim is disallowed in its entirety, due to the statute of limitations expiring prior to the filing of the case. 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 Quantum3 Group, LLC as agent for Galaxy Asset Purchasing LLC, Creditor filed in this case by Virab and Eva Abramyan, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 13 of Quantum3 Group, LLC as agent for Galaxy Asset Purchasing LLC is sustained and the claim is disallowed in amounts in excess of $839.01.

6. 14-20512-E-13 VIRAB/EVA ABRAMYAN
PGM-5 Peter G. Macaluso

OBJECTION TO CLAIM OF QUANTUM3 GROUP, LLC, CLAIM NUMBER 4
9-9-15 [96]

Final Ruling: No appearance at the October 27, 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 4 of Quantum3 Group, LLC, as agent for Crown Asset Management LLC is disallowed in excess of $1,156.67.

Virab and Eva Abramyan ("Debtor") requests that the court disallow the claim of Quantum3 Group, LLC, as agent for Crown Asset Management LLC ("Creditor"), Proof of Claim No. 4 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $12,107.24. Debtor asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. The Debtor states that according to the Proof of Claim, the last transaction date and charge off date was September 30, 2010. The date of last payment on the Statement of Account Information attached to the Proof of Claim states the last payment date is "not applicable."

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on October 16, 2015. Dckt. 113. The Trustee requests that if the claim objection is sustained, the claim be allowed in the amount of $1,156.67 which is the amount already disbursed to the Creditor by the Trustee.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's response on October 20, 2015. Dckt. 120. The Debtor states that they agree that the claim should be reduced to the amount already disbursed by the Trustee.

DISCUSSION

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).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extension of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> (c) Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 4 does not list the Debtor's last payment but does affirmatively state September 30, 2010 as the "charge off date." **This is also stated to be the "last transaction date." The Debtor Eva Abrayan's declaration states that she "did not make any payments on this account a year before they charged off the account, sent this to collection agencies after this account was charged off.** As such, [Debtor] did not make any payments on this account after 2009." Dckt. 98. The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental of credit transactions is commonly known by both creditors and consumers alike.)

Giving Creditor the benefit of the doubt based on Debtor's testimony, no payment or other transaction occurred after December 31, 2009. Thus, the four year statute of limitations expired on January 1, 2014.

This bankruptcy case was filed on January 20, 2014 - a mere nineteen days after the statute of limitations expired. But it is after the statute of limitations expired. There was no period of time for 11 U.S.C. § 108 to preserve and extend for Creditor.

Here, the Trustee disbursed $1,156.67 to the Creditor prior to the instant Objection. The Trustee, and the Debtor, request that the claim be disallowed in excess of this amount.

While the Debtor may have the duty to get these funds back from the Creditor due to the claim being disallowed, the de minimis amount distributed to the Creditor would cause the estate and Debtor to incur more in attorney's fees and motion fees than would be recovered. Therefore, the court will disallow the claim in the amount excess of $1,156.67.

Therefore, based on the evidence before the court, the Creditor's claim is disallowed in excess of $1,156.67, due to the statute of limitations expiring prior to the filing of the case. 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 Quantum3 Group, LLC, as agent for Crown Asset Management LLC, Creditor filed in this case by Virab and Eva Abramyan, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 4 of Quantum3 Group, LLC, as agent for Crown Asset Management LLC is sustained and disallowed in amounts in excess of $1,156.67.

7. 14-20512-E-13 VIRAB/EVA ABRAMYAN — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 12
PGM-6 Peter G. Macaluso — 9-9-15 [101]

Final Ruling: No appearance at the October 27, 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 9, 2015. By the court's calculation, 48 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 13 of Cavalry SPB I, LLC, as assignee for GE Retail Bank is sustained and disallowed in amount in excess of $230.35.

Virab and Eva Abramyan ("Debtor") requests that the court disallow the claim of Cavalry SPB I, LLC, as assignee for GE Retail Bank ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $2,411.24. Debtor asserts that the Statute of Limitations on the collection of contract claims in California is four years from the date the balance was due under the contract or four years from the date the last payment was made under the contract. The Debtor states that according to the Proof of Claim, the last transaction date and last payment date was October 9, 2010.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on October 16, 2015. Dckt. 111. The Trustee requests that if the claim objection is sustained, the claim be allowed in the amount of $230.35 which is the amount already disbursed to the Creditor by the Trustee.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's response on October 20, 2015. Dckt. 122. The Debtor states that they agree that the claim should be reduced to the amount already disbursed by the Trustee.

DISCUSSION

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).

California Code of Civil Procedure § 337 states in relevant part:

> 2. An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of said item, and where an account stated is based upon an account of more than one item, the

time shall begin to run from the date of the last item.

The Bankruptcy Code provides certain extension of time for actions a creditor may take when a debtor files for bankruptcy. Specifically, 11 U.S.C. § 108(c) provides:

> (c) Except as provided in section 524 of this title, if **applicable nonbankruptcy law**, an order entered in a nonbankruptcy proceeding, or an agreement **fixes a period for commencing or continuing a civil action** in a court other than a bankruptcy court **on a claim against the debtor**, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then **such period does not expire until the later of**--
>
> > (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > **(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

A review of Proof of Claim No. 12 lists the last transaction date as October 9, 2010 - a payment by Debtor. The Debtor Eva Abrayan's declaration states that she "did not make any payments on this account a year before they charged off the account, sent this to collection agencies after this account was charged off. As such, [Debtor] did not make any payments on this account after 2009." Dckt. 103.

A review of the attachment to Proof of Claim No. 12 states that the last payment date was October 9, 2010. Further, that the "charge off date" is December 12, 2010.

The Debtor Eva Abrayan's declaration states that she "did not make any payments on this account a year before they charged off the account, sent this to collection agencies after this account was charged off. As such, [Debtor] did not make any payments on this account after 2009." Dckt. 98. This is inconsistent with the Proof of Claim which states the last payment from Debtor was made in October 2010, three months before creditor charged it off.

The court takes judicial notice that a creditor does not "charge off" an account if payments are being made or further credit is being extended. (This basic fundamental of credit transactions is commonly known by both creditors and consumers alike.)

Unlike the Debtor's other objections to claim where the charge off date and the transaction date were the same, the last transaction date was three months prior to the charge off. However, like the other claims, the Creditor does not provide any transaction statements to show that there was an actual payment received October 2010, which is 10 months after what the Debtor alleges

under the penalty of perjury.

Here, the Debtor was willing to sign a declaration under penalty of perjury that no payment was made after 2009. Giving Creditor the benefit of the doubt based on Debtor's testimony, no payment or other transaction occurred after December 31, 2009. Thus, the four year statute of limitations expired on January 1, 2014. The court finds that, while neither party gives hard evidence as to the last payment date, the declaration of the Debtor signed under the penalty of perjury sufficiently rebuts the prima facie validity of the Creditor's claim.

Here, the Trustee disbursed $230.35 to the Creditor prior to the instant Objection. The Trustee, and the Debtor, request that the claim be disallowed in excess of this amount.

While the Debtor may have the duty to get these funds back from the Creditor due to the claim being disallowed, the de minimis amount distributed to the Creditor would cause the estate and Debtor to incur more in attorney's fees and motion fees than would be recovered. Therefore, the court will disallow the claim in the amount excess of $230.35.

Therefore, based on the evidence before the court, the Creditor's claim is disallowed in excess $230.35, due to the statute of limitations expiring prior to the filing of the case. 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 Cavalry SPB I, LLC, as assignee for GE Retail Bank, Creditor filed in this case by Virab and Eva Abramyan, Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 12 of Cavalry SPB I, LLC, as assignee for GE Retail Bank is sustained and disallowed in amounts in excess of $230.35.

8. 14-20512-E-13 VIRAB/EVA ABRAMYAN
DPC-1 Peter G. Macaluso

CONTINUED MOTION TO DISMISS CASE
8-11-15 [85]

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 Debtors, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. By the court's calculation, 29 days' notice was provided. 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 Motion to Dismiss is granted.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 11, 2015. Dckt. 85. The Trustee seeks dismissal on the grounds that: (1) the plan will take 91 months to complete and (2) the Debtor is delinquent.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 26, 2015. Dckt. 89. The Debtor states that they have cured the delinquency and will timely make the August 25th payment. Furthermore, the Debtor states that Debtor's counsel will be filing three objections to claims against Quantum3Group and Cavalry SPV on the basis the statute of limitations has allegedly run for these claims. The Debtor argues that, if successful on these objections, the plan would only take 60 months to complete. The Debtor requests that the Motion be denied or continued for 75 days to allow the objections to be filed.

SEPTEMBER 9, 2015 HEARING

At the hearing, the court continued the hearing to allow the Debtor to file the three objections to claim. Dckt. 106.

DEBTOR'S SUPPLEMENTAL OPPOSITION

The Debtor filed a supplemental opposition on October 5, 2015. Dckt. 107. The Debtor states that the three Objections to Claims have been filed and are set for hearing at 3:00 p.m. on October 27, 2015. The Debtor requests that the instant Motion either be denied or continued to October 27, 2015.

OCTOBER 14, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on October 27, 2015 to be heard in conjunction with the Objections to Claims.

DISCUSSION

To date, nothing has been filed in connection with the instant Motion.

On October 27, 2015, the court sustained the Debtor's three objections to claim, due to the statute of limitations running prior to the filing of the instant bankruptcy case. Therefore, the Trustee's first ground for dismissal is denied.

However, the Debtor has failed to provide evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is $490.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

9. 15-26512-E-13 MATTHEW CORSAUT
DPC-1 Gary H. Gale

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-30-15 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 30, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor failed to commence plan payments, and is $700.00 delinquent, which is one payment of the $700.00 monthly payments due;

2. The Plan fails to provide for the priority claims of:

   a. the Internal Revenue Service (Claim #3), which was an expected claim as shown in Schedule E, but was not provided for in the plan;

b. the Sacramento Department of Child Support Services (Claim #4), which may be provided for under Class 5 but Trustee seeks confirmation;

3. Debtor has not filed either state or federal tax returns for the 2014 tax year, as per Schedule E;

4. Debtor may not be able to make the payments called for by the plan:

a. Debtor proposes to surrender real property to “Fay Servicing” and not make ongoing mortgage payments;

b. However, Debtor’s Schedule J does not list the additional $850.00 per month for homeowner’s insurance, HOA dues, and monthly average estimated taxes shortage over 8 months; Debtor’s disposable income of $700.00 per month cannot accommodate that additional cost;

5. Debtor appears to be over median income and proposes plan payments of $700.00 per month for 60 months, with a 0% dividend to the unsecured creditors, however:

a. Form 22C-1 reflects - <$4856.88> on line 45, and claims $5,820.33 of gross receipts from operating a business with no business operating expenses, while claiming $3,347.62 in business expenses elsewhere; this may be double-counting the business expenses;

b. Schedule J claims $48,142.00 in gross annual income for one business, and $20,550.00 in gross annual income for the other business, which averages to $5,724.33 in monthly gross income before expenses;

c. Debtor only provides $43.00 for food and clothing, $285.52 for priority claims, $3,347.63 for business expenses, and $1,783.00 for net mortgage or rent expenses;

d. The proposed plan calls for surrender of Debtor’s real property at 6830 Domingo Drive in Rancho Murieta, CA and $1,783.00 in expenses;

e. Contrarily, Debtor’s proposed plan also states that “Rental expense is a projection when moves after foreclosure. Utilities are projected to be the same. Until the foreclosure sale, there are monthly expenses of $120.00 for homeowner’s insurance and $130.00 for HOA dues. Any additional savings while there is no rent will be applied to make up the $4,800.00 estimated taxes shortage that accrued from January-August 2015;”

f. Since Debtor owns a home, is not proposing a move out date, and has no rental expense until moving out, the $1,783.00 rent expense listed is not clear to Trustee; the only clarification Trustee can offer is at the 341 Meeting, Debtor projected a move out date of January 2016;

g. Debtor lists all past due priority claims as $17,131.00; Class 5 totals $15,831.00, and the outstanding claim #4 is for $11,299.80; thus, line #35 should list $188.30 as the amount after dividing the outstanding $11,299.80 by 60 months;

h. Line 43a lists business expenses of $3,347.62; Debtor admitted at the September 24, 2015 First Meeting of Creditors that his salary was incorrectly categorized as salary, where it should have been income; Corp dues should have been listed as franchise fees, and the expenses of Brockway and Laurel Crossings were expenses of or for prior properties owned by Debtor; thus, Trustee is unclear if the Exhibits properly listed and categorized the Debtor's business income and expenses.

Dckt. 24, 25.

DEBTOR'S REPLY

Matthew Corsaut ("Debtor") filed a reply on October 13, 2015. Dckt. 28. Debtor responds to the objections as follows:

1. Debtor is current on payments, as shown by Exhibits attached to Debtor's reply;

2. The priority claims for the Internal Revenue Service (Claim #3) and the Department of Child Support Services (Claim #4) are provided for in the proposed plan:

   a. IRS Claim #3 - First, Debtor asserts the tax returns for the 2014 tax year, and both the Franchise Tax Board and the IRS returns show no tax was owed to either tax agency; Debtor also asserts that the plan payments of $700.00 for 60 months are for unsecured debts only, as the priority debt is the child and spousal support of $11,299.80, the claim for reimbursable expenses for children on Schedule D at $5,236.00, and the $6,000.00 of attorney's fees, for a total of $22,535.80; as the plan will pay a total of $42,000.00, the plan can accommodate both the Trustee's 5.1% fees and any surplus in the IRS claim;

   b. Sacramento Department of Child Support Services Claim #4 - Debtor will stipulate to language that clarifies the Class 5 provisions provide for this claim under the name of Debtor's ex-wife, Dawn Corsaut; thus, thus claim is provided for in the plan;

3. Debtor asserts the 2014 tax returns for IRS and Franchise Tax Board were forwarded to Trustee with the Business Questionnaires;

4. The Debtor states that the Plan calls for the surrender of his residence but that no action has been taken by the fist deed of trust creditor. The Debtor states that the Debtor does not want to leave the property vacant due to possible vandalism, city fines that may be assessed, and the fact that the Debtor remains personally liable for the homeowner's association and utility expenses. The Debtor cannot

accurately identify when the sale will be concluded. As to the expenses on Schedule J, they are projected expenses for when the Debtor does move, which the Debtor suspects will be the same as his current expenses. The Debtor states that he will incur monthly expenses of $120.00 for homeowner's insurance and $130.00 for HOA dues, leaving a projected surplus of $750.00. Debtor has made calculations of his 2015 tax liability and determined that he needs to set aside $600.00 a month for estimated taxes. The Debtor has not set aside any monies yet, but states that he will be able to due to not paying rent currently.

5. The Debtor states that the Trustee is inappropriately referencing the Debtor's Schedule J when discussing projected income. The Debtor asserts that the disposable income projection of net business revenue is based on the six months prior to the case being filed. The Debtor asserts that the accurate average of expenses for the six months prior to filing for the business is $3,347.63. As such, the Debtor argues that the disposable income is a negative $4,856.88. The Debtor then continues to address the Trustee's individual objections:

   a. The standard housing deduction is properly claimed even though the residence will be surrendered. The Debtor argues that since he will have a housing expense once the foreclosure is completed, Debtor is entitled to the deduction.

   b. The Debtor states that he will not justify his additional food and clothing expenses of $43.00 because it is trivial amount and does not impact the analysis.

   c. As to the priority claim, the Debtor concedes that the deduction on line 35 should be $275.60, which is $9.92 less than Debtor listed. As a result, line 45 would be adjusted to a negative $4,846.96. Debtor proposes to correct this in the order confirming.

   d. As to the categorization of expenses, the Debtor pays a monthly franchise fee for the reality business to Reality World, which is a corporation. The Debtor listed the expense on his Profit and Loss Statements as corporate dues rather than franchise fees. However, the Debtor states that this is not material and does not change any of the calculation. The Debtor also states that the Trustee was correct that the $60.44 deducted as to the Brockway and Laurel Crossing properties for the reality business was in error because the Debtor no longer owns the properties. The Debtor states that the expense for the Brockway property was actually a supplies expense that was put in the wrong category and the expense for the Laurel Crossings property was actually an auto fuel expense.

The Debtor requests that, based on the response, the Trustee's objection is overruled and the plan confirmed with the following corrections in the order confirming:

1. The priority claim for child and spousal arrears filed by the Sacramento Department of Child Services as the collector for

Dawn Corsaut shall be paid to said Department as designated in the claim.

2. Form 22C-2, line 35, be amended to $275.60.

3. Form 22C-2, line 45 be amended to -$4,846.96.

TRUSTEE'S REPLY

The Trustee filed a reply on August 20, 2015. Dckt. 33. The Trustee replies as follows:

1. The Debtor is current to date, with the October payment due on October 25, 2015 in the amount of $700.00.

2. As to the Trustee's objection that the plan fails to provide for all priority claims, the Trustee states the following:

   a. As to the Internal Revenue Service claim, the Trustee states that the Trustee received the Debtor's 2014 tax return but that it did not contain Debtor's signature nor was the return dated. The Debtor's exhibit also does not contain this information. Additionally, the Internal Revenue Service filed a Proof of Claim No. 3 on September 8, 2015 which described the "Date Tax Assessed" as "NOT FILED" for the tax period of "12/31/2014"

   b. As to the Sacramento Department of Child Support Services, the Debtor has agreed to stipulate and resolve this objection.

3. In the event that the 2014 tax return has been filed with the Internal Revenue Service, the matter would appear resolved. But the Trustee notes that the business questionnaire was dated August 28, 2015 and the claim from the Internal Revenue Service was filed September 8, 2015. The Trustee is uncertain if and when the return was filed.

4. The Trustee states that the Debtor has the burden of proof to the feasibility of the plan. The Debtor admits to an additional $600.00 per month expense for taxes and that the Debtor requests that the court permit the Debtor to project expenses of $1,000.00 for rent he is currently payment even though the Debtor cannot project when that expense will actually begin given the uncertainty of the foreclosure sale. The Trustee argues that based on the uncertainty of the expense and the actually time such an expense will begin being incurred, the court should not find the Debtor's explanation sufficient to feasibility..

5. The Trustee agrees that the key argument for the disposable income is whether the business expenses have been double counted. The Trustee argues that the Debtor failed to address directly the issue, outside of stating that the figures are based on the gross receipts for the prior 12 months rather than

net income.

DISCUSSION

The Trustee's objections are well-taken. The crux of the argument between the Trustee and the Debtor is whether the Debtor can propose a plan using projected expenses as to rent, property taxes, and insurance when the Debtor is currently living without such an expense while awaiting the first deed of trust creditor to foreclose on the property.

The court agrees with the Trustee that the "projected" expenses and the deductions alleged by the Debtor are not proper. The Debtor is essentially creating a fictitious estate and expenses. The Debtor does not provide an accurate picture of the Debtor's current financial reality.

Instead, the Debtor attempts to confirm a plan based on presumptions and estimations for expenses when the foreclosure current residence takes place. This type of guess work does not provide the court, the Trustee, or other parties in interest the opportunity to truly determine if the plan, as proposed, is feasible, viable, or even possible when the information provided by the Debtor is nothing more than speculative.

Both the Debtor and the Trustee get a bit lost in the specifics of the case, while the larger picture concern of whether the parties have an accurate current picture of the Debtor's financial reality is the concern. In response to the Trustee's Objection, Debtor admits that the information in which the plan is based is speculative and not accurate. Instead, he wants to fund a plan based upon theoretical expenses, if he was actually paying the expenses.

Debtor proposes a sixty month plan. During that time, he seeks to retain monies to pay a phantom housing expense of $1,000.00 a month. Schedule J, Dckt. 9 at 29. If Debtor is successful in preventing a foreclosure during the life of the Chapter 13 Plan, then Debtor will have improperly diverted $60,000 of disposable income from the plan and creditors.

Debtor attempts to justify this phantom expense by Stating on Schedule J, "Any additional savings while there is no rent will be applied to make up the $4,800.00 estimated taxes shortage that accrued from January-August 2015. *Id.* at 31. As stated above, Debtor failed to provide for this claim in the proposed Chapter 13 Plan.

In response to the Objection, Debtor's counsel has chosen to provide a declaration testifying as to the communications he had with his client concerning the information which he client (who is also an attorney) has stated under penalty of perjury on the Schedules. The court will pass on taking this disclosure of attorney client communications, and instead focus on the Debtor's current statements under penalty of perjury.

Debtor confirms that he is both a real estate agent and an attorney. Declaration, Dckt. 30. He confirms that he will not vacate the property until the lender has concluded a foreclosure sale. Such a decision is a financial one for which Debtor cannot be faulted, as why should anyone incur an otherwise unnecessary rental expense.

In generating a minimal $700 a month plan payment, which provides for

a 0.00% dividend to creditors having general unsecured claims and provides only for Debtor's delinquent nondischargeable support payments and possibly the pre-petition estimated taxes which Debtor failed to pay, Debtor double deducts some expenses.

In looking at the claims, and potential post-petition administrative claim for taxes for 2015 due to Debtor's failure to make the necessary estimated tax payments for the first eight months of the year (11 U.S.C. § 1305), the proposed plan of letting the Debtor keep phantom rent is not reasonable.

By the Plan's accounting, Debtor is $15,831.00 delinquent in support payments. Plan, Class 5 ¶ 2.13; Dckt. 10. In reviewing the Sacramento County Department of Child Support Services Proof of Claim (No. 4), it states that $11,299.80 of the obligation is due the County. Debtor also states that he has failed to properly make estimated tax payments of $4,800 for the first eight months of 2015.

Debtor's proposal to "trust me" and give me an extra $1,000.00 a month until I eventually get evicted from the house in which I'm living rent/mortgage free" is not reasonable. Debtor has demonstrated that he has not been able to make his mortgage payment and support payments. Just giving him an extra $1,000.00 a month for which he is not accountable is not reasonable, feasible, or in good faith. It could well be that between now and the end of the year the $1,000.00 a month just gets spent on other "necessaries," as did the prior tax money and support money. Then the Debtor will seek to have all of the 2015 taxes put into a modified plan, and have the creditors pay that as well.

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 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.

10. 15-26512-E-13 MATTHEW CORSAUT
GW-1 Gary Gale

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF GERALD L. WHITE FOR GARY H. GALE, DEBTOR'S ATTORNEY(S)
9-16-15 [18]

Tentative Ruling: The Motion For Allowance of Fees for Debtor's Counsel 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 - 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, Creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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).

The hearing on the Motion for Allowance of Interim Professional Fees is granted in part, with the balance of the requested fees denied without prejudice.

Tentative Ruling, Conditioned Upon the Court Confirming the Proposed Chapter 13 Plan:

Gary H. Gale of the Law Office of Gerald L. White, the Attorney ("Applicant") for Debtor Matthew Albert Corsaut ("Client"/"Debtor"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the pre-petition period of July 27, 2015, through August 17, 2015, and the post-petition period of August 18, 205, through September 14, 2015. Applicant requests pre-petition fees and costs in the amount of $1,930.00 and post-petition fees and costs in the amount of $4,740.00. For the post-petition fees, Applicant requests that $1,980.00 held by Applicant in trust for Applicant's fees be used, and the remaining $2,760.00 be paid from funds through the Chapter 13 Plan. Dckt. 18.

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 [or other professional] 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 including pre-petition administrative activities and post-petition preparation and management of the case. The court finds that, as of the current status of this case, that some of the services were beneficial to the Client and bankruptcy estate and reasonable. For others, the jury is still out.

The court's concern is that Debtor, with the assistance of counsel, has created a potential list of expenses, which do not accurately state the true, current, expenses. Debtor is living rent and mortgage free, for a creditor who has not yet begun the foreclosure sale process. The proposed Chapter 13 Plan provides Class 3 treatment for a secured claim of "Fay Servicing." Plan, ¶ 2.10; Dckt. 10. The plan does not identify the collateral securing the claim of "Fay Servicing." No secured claim has been filed by "Fay Servicing."

On Schedule D, "Fay Servicing" is listed as the "creditor" having a claim in the amount of $658,156.00 that is secured by the Domingo Drive Property. Dckt. 9 at 14. It appears that the "Fay Servicing" listed on Schedule D and the Plan is Fay Servicing, LLC (Entity No. 200811910013) listed by the California Secretary of State registered to do business in California. FN.1. Fay Servicing, LLC is not a name which the court recognizes as a creditor in bankruptcy cases. Rather, it appears to be in the nature of a loan servicing company which is not the creditor, but merely a servicing agent for the creditor. Commonly, the servicing companies are not agents for service of process for the creditor. FN.2.

FN.1. http://kepler.sos.ca.gov/.

FN.2. As all of the attorneys are aware, the court has been concerned with both creditors and debtors correctly identifying the real party in interest in federal court proceedings. This relates to debtor's naming servicing companies as a "creditor," treating them as the placeholder for the real party in interest (and thereby possibly not getting an effective order) and loan servicing companies misrepresenting it is the creditor (hiding the identity of the actual creditor) so as to thwart a debtor obtaining effective service on the creditor. While not taken as evidence, a review of the LEXIS NEXIS Public Records on-line data base lists an entity named as ABN AMRO Mortgage Group, Inc. as the "Lender" for this secured claim. No reference is made to Fay Servicing, LLC.

At its website, Fay Servicing, LLC states, " Founded in early 2008, our company is committed to providing innovative servicing solutions for both performing and non-performing mortgages." Nothing on the webpage indicates that "Fay Servicing" is a debt buyer or trustee of a loan portfolio. www.fayservicing.com/about-us.php

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As written, the Chapter 13 Plan would allow only "Fay Servicing" to exercise its rights as a creditor to exercise "Fay Servicing's" rights in the collateral securing "Fay Servicing's" claim. Given that the Debtor is an attorney and is represented by an attorney, it concerns the court that there is no indication that the actual creditor with a secured claim is provided for in the Plan. As with the Debtor keeping $1,000.00-plus for an unstated period of time during the sixty months of this plan and the Debtor being "trusted" to use the extra money he is keeping to pay heretofore unpaid taxes, this apparent "misidentification" may have been done to create an ineffective plan term as to the actual creditor to further extend the Debtor receiving money for phantom expenses.

A portion of the legal fees requested may well not be reasonable and necessary, but part of a plan to improperly divert monies to the Debtor. The court denies a portion, without prejudice, to be considered in light of the plan, if any, Debtor is able to confirm in this case.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Pre-petition Administration: Applicant spent 5.4 hours in this category. Applicant assisted Client with reviewing assets and debts, identifying Plan issues and follow-up information needed for face sheet filing, communicating with client, discussing potential issues that may arise after filing, and drafting 362 notice letter to ex-wife's family law attorney to stop collection. Dckt. 22 Ex. B.

Post-petition Preparation and Management of Case: Applicant spent 15.7 hours in this category. Applicant met with, then assisted, client to prepare the petition and supporting documents, proofread the documents, reviewed the proofs of claim, and advised client on various questions or issues throughout the process. Dckt. 22 Ex. C.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Gary H. Gale	21.1	$300.00	$6,330.00
Total Fees For Period of Application			$6,330.00

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $340.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Court Filing Fee	$310.00	$310.00
Amendment Cover Sheet Filing Fee	$30.00	$30.00
Total Costs Requested in Application		$340.00

Dckt. 22 Ex. B, C.

David Cusick, the Chapter 13 Trustee, filed a nonopposition on September 18, 2015.

OCTOBER 20, 2015 HEARING - CONTINUANCE FOR FINAL RULING

The Chapter 13 Trustee has filed an objection to confirmation. Debtor has filed a response, substantively addressing the issues. This objection may be resolved, or confirmation may be delayed. The court continued the hearing on this Motion for one week to allow the Objection to Confirmation to be addressed.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $2,000.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner

consistent with the order of distribution in a Chapter 13 under the confirmed Plan. The balance of the fees are disallowed without prejudice.

Costs and Expenses

The First Interim Costs in the amount of $340.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	$2,000.00
Costs and Expenses	$340.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

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 Gary H. Gale of the Law Office of Gerald L. White ("Applicant"), Attorney for 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 Gary H. Gale of the Law Office of Gerald L. White is allowed the following fees and expenses as a professional of the Estate:
>
> Gary H. Gale of the Law Office of Gerald L. White, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $2,000.00
> Expenses in the amount of $340.00,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. The balance of the requested fees are disallowed without prejudice.
>
> **IT IS FURTHER ORDERED** that the Trustee, under the confirmed plan, is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

11. 15-26614-E-13 NICOLE DOW
ELG-1 Julius M. Engel

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK
9-22-15 [18]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., D/B/A Wells Fargo Dealer Services ("Creditor") is granted and the Creditor's secured claim is determined to have a value of $14,354.00

DEBTOR'S MOTION TO VALUE

The Motion filed by Nicole Dow ("Debtor") to value the secured claim of Wells Fargo Bank D/B/A Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Infinity QX56 4D, VIN ending in 4164 ("Vehicle"). The vehicle was purchased in June 28, 2012. Dckt. The Debtor seeks to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir.

2004). Debtor asserts that the debt owed is approximately $14,354.00.

CREDITOR'S OPPOSITION

Creditor filed an opposition on October 5, 2015. Dckt. 27.

In sum, Creditor argues that Debtor's valuation is too low and Creditor's loan is fully secured by the vehicle. Attached to the Declaration of Tabitha Reel is a NADA Official Used Car Guide, which lists a replacement value at $15,725.00. Dckt. 30, Exh. C. FN.1. Based on this valuation, Creditor asserts the debt of $14,354.00 is fully secured by the vehicle's value.

FN.1. Creditor provided a copy of the NADA Valuation Report for the Vehicle. The Report has been properly authenticated and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Dckt. 29; Fed. R. Evid. 803(17), 901.

DISCUSSION

The lien on the Vehicle's title secures a purchase-money loan incurred in June 28, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,354.00.

Creditor offered evidence through the NADA report that the vehicle's replacement value is $15,725.00, which fully secures the debt of $14,354.00. As Debtor has not provided evidence for a lower valuation based on wear and tear, damage, or other circumstances to reduce the value of the vehicle, the court will use Creditor's valuation of the vehicle at the clean retail value. Dckt. 30 Exh C; 11 U.S.C. § 506; *Associates Comm'l Corp. V. Rash*, 117 S. Ct. 1879 (1997) (in chapter 13 cramdown, replacement value is used to determine amount of creditor's secured claim).

In the absence of evidence for using a lesser value, the court finds the value of the vehicle is $15,725.00 and the value of the debt is $14,354.00.

The lien on the Vehicle's title secures a purchase-money loan incurred in June 28, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,354.00. Therefore, the Creditor's claim secured by a lien on the asset's title is fully collateralized. The creditor's secured claim is determined to be in the amount of $14,354.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Nicole Dow ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank D/B/A Wells Fargo Dealer Services ("Creditor") secured by an asset described as 2005 Infinity QX56 4D, VIN ending in 4164 ("Vehicle") is determined to be a secured claim in the amount of $14,354.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $15,725.00.

12. 15-25318-E-13 MARK/COLLEEN MARTIN **MOTION TO CONFIRM PLAN**
SDH-2 Scott D. Hughes **9-15-15 [22]**
DEBTOR DISMISSED:
10/12/2015
JOINT DEBTOR DISMISSED:
10/12/2015

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

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

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

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

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

13. 15-21819-E-13 TERRY/CHARLOTTE SEELY CONTINUED MOTION TO MODIFY PLAN
PLC-1 Peter L. Cianchetta 7-17-15 [21]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 2015. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

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

Terry and Charlotte Seely ("Debtor") filed the instant Motion to Confirm the Modified Plan on July 17, 2015. Dckt. 21.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on August 27, 2015. Dckt. 26. The Trustee objects on the ground that the plan will take longer than 60 months to complete. The Trustee states that the plan calls for payments totaling $33,715.00 for 60 months. Disbursements under the plan are approximately $41,595.07 including Trustee fees. Disbursements are $7,880.00 greater than proposed payments (Secured principal and interest $9,662.54, attorney fees $3,875.00, unsecured claims $25,354.53 and Trustee fees $2,703.00). The Trustee estimates that 15 additional months would be required.

DEBTOR'S REPLY

The Debtor filed a reply to the instant Motion on September 4, 2015. Dckt. 37. The Debtor states that they have filed an Objection to Claim No. 8 which is set for October 27, 2015. The Debtor asserts that the claim of EnerBank was filed 5 days after the claims bar date, and the claim amount of EnerBank is $8,772.00 which is $890.00 more than the Trustee states the

payments are to be short. The Debtor asks that the instant hearing is continued to October 27, 2015.

SEPTEMBER 15, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on October 27, 2015 to be heard in conjunction with the Objection to Claim No. 8. Dckt. 45.

TRUSTEE'S RESPONSE

The Trustee filed a response on October 13, 2015. Dckt. 46. The Trustee states that the plan will complete timely if the Objection is granted. The Debtor is current under the proposed modified plan.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

At the October 27, 2015 hearing, the court sustained the Objection to Claim No. 8 in its entirety.

The Debtors have filed evidence in support of confirmation. No opposition to the Motion remain following the court sustaining the Objection and the Debtor is current under the proposed modified plan. With no objections remaining and upon the court's own review of the Plan, 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 17, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

14. 15-21819-E-13 PLC-2 TERRY/CHARLOTTE SEELY Peter L. Cianchetta

AMENDED OBJECTION TO CLAIM OF ENERBANK USA, CLAIM NUMBER 8 9-11-15 [39]

Final Ruling: No appearance at the October 27, 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 11, 2015. By the court's calculation, 46 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 8 of EnerBank USA is sustained and the claim is disallowed in its entirety.

Terry and Charlotte Seely, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of EnerBank USA("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. FN.1. The Claim is asserted to be unsecured in the amount of $8,722.00. 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 July 15, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 11.

FN.1. The court notes that Peter Cianchetta, attorney for the Objector, stated in the Objection: "Peter Cianchetta, Attorney for Daniel Gutterez and Mary Stella Gutterez, the Debtors herein,...." The court sua sponte corrected this to reflect the actual Debtors in the instant case.

David Cusick, the Chapter 13 Trustee, filed a nonopposition to the instant Objection on September 15, 2015.

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

The deadline for filing a Proof of Claim in this matter was July 15, 2015. The Creditor's Proof of Claim was filed July 20, 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 EnerBank USA, Creditor filed in this case by Terry and Charlotte Seely, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8 of EnerBank USA is sustained and the claim is disallowed in its entirety.

15. 15-26620-E-13 KEVIN/DEBRA JOHNSON
DPC-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-30-15 [28]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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 20, 2015. By the court's calculation, 37 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on November 17, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the plan relies on a Motion to Value Collateral of Nationwide Assets LLC.

At the October 6, 2015, the court continued the Motion to Value Collateral of Nationwide Assets LLC to 3:00 p.m. on November 17, 2015 based on the stipulation of the parties. Dckt. 36.

In light of the instant Objection being based on the Motion to Value Collateral of Nationwide Assets LLC, the court continues the instant Objection to 3:00 p.m. on November 17, 2015 to be heard in conjunction with the Motion to Value.

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 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 continued to 3:00 p.m. on November 17, 2015.

16. 12-40521-E-13 RAYMOND/ANITA WEAVER
NSV-3 Nima S. Vokshori

MOTION FOR COMPENSATION FOR N. STEPHEN VOKSHORI, DEBTORS' ATTORNEY(S)
9-17-15 [62]

Tentative Ruling: 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).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties are entered.

The Motion for Allowance of Professional Fees is denied.

Vokshori Law Group, APLC, the Attorney ("Applicant") for Raymond and Anita Weaver ("Client" or "Debtor"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 15, 2012, through January 19, 2015. Applicant requests fees in the amount of $1,612.50.

FAILURE TO COMPLY WITH FEDERAL RULE OF BANKRUPTCY PROCEDURE 9013

As addressed in this Ruling, the present Motion suffers from several deficiencies. The first is that the Motion fails to state with particularity the grounds upon which the relief is based. Fed. R. Bankr. P. 9013. Rather, the motion merely states that counsel seeks $1,612.50 in "interim fees," and for the court to read through the memorandum of points and authorities, declaration, Exhibits, Application and Declaration, the pleadings and evidence on file, and whatever other evidence the court may allow. In substance, the "Motion" directs the court to dig through every document in this case and assemble for the attorney every possible grounds which the court assumes counsel would state with particularity if counsel had complied with Rule 9013. The court declines the opportunity to provide such associate attorney services to any party.

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 [or other professional] 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.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Significant Motions and Other Contested Matters: Applicant spent 5.65 hours in this category. Applicant filed a motion to value a lien on real property with supporting documents, then filed this fee application. Dckt. 64. FN.1.

FN.1. The court notes that the Hourly Billing Breakdown, provided by Applicant, shows 7.4 hours billed for $2,137.50. It is unclear why, but Applicant seems to have excluded the hours of E. McGuire at $300.00 per hour for 1.75 hours. Dckt. 64.

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

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
N. Stephen Vokshori	2	$350.00	$700.00
Ryan Stubbe	3.65	$250.00	$912.50
E. Richard McGuire	0	$300.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,612.50

Applicant also notes that this court previously approved payments totaling $3,500.00 to Applicant: $2,000.00 for pre-petition services, and $1,500.00 to be paid through the plan. Dckt. 62. FN.2.

FN.2. The court notes that Applicant improperly filed a Declaration in the same file as the Motion. This violates LBR 9014-1(d), as the documents should be filed separately. However, the court *sua sponte* waives this defect.

Costs and Expenses

Applicant does not seek reimbursement for costs and expenses.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed an opposition on October 9, 2015. Dckt. 67.

Trustee asserts the services provided are not unanticipated. First, Applicant has been granted $3,500.00 in fees to date. Second, Applicant's original filing was a skeleton filing, missing all Schedules, Statement of Financial Affairs, and the Plan; the remaining documents were filed on November 30, 2012, including a Rights and Responsibilities which shows Applicant was paid $2,000.00 prior to filing. Third, the plan proposed plan payments of $55.00 per month for 36 months, paying $1,500.00 to Applicant while providing 0% to general unsecured creditors. Fourth, the First Meeting of Creditors was held December 27, 2012, and was continued to January 31, 2013 due to counsel's failure to attend the first meeting. Finally, the Motion to Value Wells Fargo Bank's junior lien was discussed at the initial consultation on November 15, 2012; the plan provided $0.00 in plan payments to Wells Fargo Bank as a Class 2 claim. Dckt. 68.

On these grounds, Trustee asserts the services provided by Applicant were not beyond the scope of general confirmation tasks and requests this

application for fees be denied.

DISCUSSION

Trustee's opposition is well-taken.

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

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 52. Applicant prepared the order confirming the Plan.

If Applicant believed that there has been substantial and unanticipated legal services which have been provided, then such additional fees would have been requested as provided in Local Bankruptcy Rule 2016-1(c)(3). Applicant has chosen not to seek such additional fees. Instead, counsel want to get the benefit of the $3,500.00 set fee, and then duplicate the billings to bonus the amount of fees awarded in the case.

Here, the Applicant does not provide any argument or reasons in the Motion which allege that the services rendered were unanticipated and substantial. Looking at the Motion, the only arguable ground for the fees in addition to the $3,500.00 in no-look fees is the statement that the services rendered were "excluded services." The two services were the Motion to Value Real Property and the Application. The language of Local Bankruptcy Rule 2016-1 states that the no-look fee will "fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed." In opting to get the $3,500.00 set fee, Applicant is obligated to provide all the services covered thereby. The Order confirming the Plan expressly states that fees allowed are in compliance with Local Bankruptcy Rule 2016-1(c). The court finds that a Motion to Value and the instant Application all fall within the scope of the no-look fee.

Local Bankruptcy Rule 2017-1 in effect at the time of the engagement of Applicant provided,

> "LOCAL RULE 2017-1
> Attorneys - Appearances, Scope of Representation, and Withdrawal
>
> (a) Scope of Representation in Bankruptcy Cases and Proceedings.
>
> (1) An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and reaffirmation agreements. However, an appearance in the bankruptcy case for a party does not require the attorney to appear for that party in an adversary proceeding."

In the Disclosure of Compensation of Attorney For Debtor (Dckt. 8), Applicant does state under penalty of perjury several exclusions which are proper. These are for "dishargability actions" or "other adversary proceedings." It also states that to be excluded are "relief from stay actions" and "judicial lien avoidances." For the relief from stay, debtor's counsel must meet with the client and consider the motion. If counsel determines that the opposition is not one that in good conscious prosecute (Fed. R. Bank. P. 9011) or

> that the scope is outside what is reasonably considered within a set fee, then counsel may seek relief from representing the debtor on that issue or confirmation that the services are outside the scope of the set fee.
>
> (2) An attorney appearing in a bankruptcy case or in an adversary proceeding may not withdraw from representation, or decline to act on behalf of the client, without first complying with the withdrawal requirements of Subpart (e) of this Rule. Any contract or agreement which purports to limit the scope of an attorney's representation, except as permitted by Subpart (a)(1) of this Rule, will not be recognized by the Court."

The prior versions of the Local Bankruptcy Rules are available on the court's website under he Local Rules section.

A review of the Docket shows that, since 2012, the Applicant has only filed a plan, a Motion to Confirm, a Motion to Value, and the instant Application. Yet, the Applicant is seeking to receive an additional $1,612.50, in addition to the $3,500.00, for these purported "excluded services." The services provided are within the $3,500.00 which Applicant elected and are not (1) "excluded services" or (2) "additional, unanticipated services." (Up to the time of confirmation, if Applicant determined his decision to represent the Debtor for a $3,500 set was improvident based on new or therefore undisclosed information, he could have elected to forgo just taking the $3,500.00 and proceed with requesting fees in the case by applications.)

Applicant's request for additional fees is denied.

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 Vokshori Law Group, APLC ("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 the motion is denied.

17. 14-30925-E-13 JAMES KENNEDY
DPC-2 Thomas L. Amberg

OBJECTION TO CLAIM OF MOUNTAIN LION ACQUISITIONS, INC., CLAIM NUMBER 10
9-14-15 [60]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2015. By the court's calculation, 43 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 10 of Mountain Lion Acquisitions, Inc. is overruled without prejudice.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Mountain Lion Acquisitions, Inc. ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $11,691.21. 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 11, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

Unfortunately, the Trustee only provided 43 days notice for the instant Objection. Pursuant to Fed. R. Bankr. P. 3007(a) and Local Bankr. R. 3007-1(b)(1), 44 days notice is required.

Therefore, since the Trustee failed to give sufficient notice, the Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Mountain Lion Acquisitions, Inc., Creditor filed in this case by David Cusick, the chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 10 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Mountain Lion Acquisitions, Inc. ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $11,691.21. 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 11, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

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

The deadline for filing a Proof of Claim in this matter was March 11, 2015. The Creditor's Proof of Claim was filed July 27, 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 Mountain Lion Acquisitions, Inc., Creditor filed

in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 10 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

18. 14-30925-E-13 JAMES KENNEDY
DPC-3 Thomas L. Amberg

OBJECTION TO CLAIM OF MOUNTAIN LION ACQUISITIONS, INC., CLAIM NUMBER 11
9-14-15 [65]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2015. By the court's calculation, 43 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim number 11 of Mountain Lion Acquisitions, Inc. is overruled without prejudice.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court

disallow the claim of Mountain Lion Acquisitions, Inc. ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $10,969.61. 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 11, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

Unfortunately, the Trustee only provided 43 days notice for the instant Objection. Pursuant to Fed. R. Bankr. P. 3007(a) and Local Bankr. R. 3007-1(b)(1), 44 days notice is required.

Therefore, since the Trustee failed to give sufficient notice, the Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Mountain Lion Acquisitions, Inc., Creditor filed in this case by David Cusick, the chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 10 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of Mountain Lion Acquisitions, Inc. ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $10,969.61. 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 11, 2015. Notice of Bankruptcy Filing and Deadlines, Dckt. 15.

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

The deadline for filing a Proof of Claim in this matter was March 11, 2015. The Creditor's Proof of Claim was filed August 3, 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 Mountain Lion Acquisitions, Inc., Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 11 of Mountain Lion Acquisitions, Inc. is sustained and the claim is disallowed in its entirety.

19. 10-34827-E-13 DEWAIN/BARBARA CALLAWAY
PLG-3 Steven A. Alpert

MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE TO THE DECEASED; MOTION FOR CONTINUED ADMINISTRATION OF CASE AND MOTION FOR WAIVER OF POST-PETITION EDUCATION REQUIREMENT AND CERTIFICATION OF REQUIREMENTS FOR ENTRY OF DISCHARGE
10-8-15 [76]

WITHDRAWN BY M.P.

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2015. By the court's calculation, 21 days' notice was provided. 28 days' notice is required.

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

The court's decision is to deny the Motion without prejudice. The Chapter 13 Trustee, U.S. Trustee, and other parties in interest may present the issues relating to the substance of the matter by separate motion, as appropriate.

Dewain Callaway and Barbara Callaway commenced this Chapter 13 case on June 4, 2010. On August 17, 2015, the court entered an order Confirming the Chapter 13 Plan in this case. Dckt. 30. The Chapter 13 Plan required monthly payments of $2,354.00 a month. Under the Plan, the only creditors to be paid was the creditor holding the lien secured by Debtors' home (including curing a $17,500.00 pre-petition arrearage), the County tax collector holding a claim secured by Debtors' home, and the creditor holding the claim secured by Debtors' vehicle.

To confirm the Plan, the court, Chapter 13 Trustee, and creditors relied upon the financial information stated in Schedule I filed by Debtors. Between the two of them, the Debtors had $5,678.00 in gross income. Schedule I, Dckt. 1 at 27. Debtors stated under penalty of perjury that they had expenses of $3,324.00 on Schedule J. *Id.* at 28. Though Schedule I states that Mrs. Callaway is self-employed, no provision is made for the payment of any income tax or self-employment taxes on Schedules I or J.

Nothing further was head from Debtor in court until the present Motion was filed on July 27, 2015. This was not filed until after the maximum time period of sixty-months for a Chapter 13 Plan had expired. The Motion seeks to obtain a discharge for Dewain Callaway, and waive any requirements that the required certifications for Mr. Callaway's interest be made as a condition of a discharge being entered.

The Motion states that Mr. Callaway passed away of December 12, 2014. That was eight months before the end of the sixty month plan. No explanation is offered in the motion for the eight month delay in notifying the court and seeking the appointment of a personal representative for Mr. Callaway so the case could continue to be prosecuted. Federal Rule of Bankruptcy Procedure 1016 requires the court to make a determination whether a Chapter 13 case can be administered following the death of a debtor.

Federal Rules of Bankruptcy Procedure 7025 and 9014 incorporate Federal Rule of Civil Procedure 25 into the bankruptcy process. Pursuant to Federal Rule of Civil Procedure 25, a notice of death must be filed and a motion to substitute a real party in interest must be filed within 90 days thereafter.

Here, an issue exists as to how the surviving Debtor could have performed the last eight months of the Plan. While the surviving Debtor's declaration provides the certifications otherwise required under 11 U.S.C. § 1328, it does not address the financial feasibility of continuing in the administration of the case.

Using the information provided on Schedule I under penalty of perjury, the surviving Debtor's gross monthly income is $4,138.00 a month. In reviewing the expenses, there appears to be little which would be reduced for only one Debtor. Decreasing the food and household keeping expenses from $600 a month to $450 a month reduces the expenses to only $3,174 a month. Subtracting that from the gross income of $4,138, that leaves only $964.00 a month *gross* to fund the Plan and pay the income and self-employment taxes.

The court also notes that the monthly expenses include $24.00 for life insurance. Schedule J does not identify the beneficiary of that policy. On Schedule B it states that "joint debtor" (who the court understands to be Mrs. Callaway) has a term life insurance policy.

DISCHARGE FILED BY CLERK OF THE COURT

Crossing in the mail with the current Motion, the Clerk of the Court entered a discharge for "debtor." This appears to have been issued based on the 11 U.S.C. § 1328 certification filed only by Joint-Debtor Barbara Callaway. Dckt. 59. No certifications have been provided for the Deceased Debtor and any purported discharge entered thereon would be in error.

OPPOSITION OF CHAPTER 13 TRUSTEE

On August 25, 2015, the Chapter 13 Trustee filed an Opposition to the predecessor Motion to waive the requirements. Dckt. 65. The Trustee identifies the life insurance issue, as well as the nondisclosure of survivor benefits.

The Trustee has filed an opposition to the present Motion on October 13, 2015. Dckt. 82. The Trustee objects on the ground that the Debtor failed to properly serve the instant Motion. The Trustee states that the Debtor did not properly serve the instant Motion through email pursuant to Local Bankr. R. 7015-1(d)(1) and (3).

The Trustee also notes that it appears that the deceased debtor may have inadvertently received a discharge. Dckt. 75.

REQUESTED WITHDRAWAL OF MOTION

After receiving the Opposition, the Surviving Debtor filed a "Notice of Withdrawal" of the Motion. Once an opposition was filed, the Surviving Debtor cannot unilaterally dismiss the Motion. Fed. R. Civ. 41(a)(1)(A) and Fed. R. Bankr. 7041 and 9014.

DECISION

First, the court notes that the Debtor failed to provide sufficient notice. According to the Notice of Hearing, the Debtor attempted to serve the Motion pursuant to Local Bankr. R. 9014-1(f)(1), which requires 28 days notice. However, the Debtor only provided 19 days notice. Additionally, as pointed out by the Trustee, the Debtor failed to properly electronically serve the Trustee with the PDF copies of the Motion and accompanying papers as required by Local Bankr. R. 7015-1. These alone are grounds to deny the Motion.

Ignoring the failure of the Debtor to properly notice and serve the Motion, the court denies the Motion without prejudice. It is clear that the issues raised are not addressed in the present Motion. The Chapter 13 Trustee, U.S. Trustee, and other parties in interest may properly present to the court the issues relating to the passing of the Deceased Debtor, property of the Estate, and the effect of the Clerk entering a discharge for "debtor."

Further, the Clerk's Office has filed a "Close of Bankruptcy Case" order in error. Dckt. 87. The case cannot be closed which this matter is pending. Additionally, the case cannot be closed until the Trustee and other parties in interest may raise issues, if any, they have.

In addition to denying the motion without prejudice, the court vacates the Clerk's Final Decree and Order Closing. This case shall not be closed and

a final decree entered until after December 15, 2015.

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 Substitution of Personal Representative and Waiver of Certifications filed by Barbara Callaway having been presented to the court, the Chapter 13 Trustee having filed an Opposition to the Motion, the Movant having filed a notice of "withdrawal" stating that she was not proceeding with the Motion after the Opposition was filed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.
>
> **IT IS FURTHER ORDERED** that the Clerk of the Court entered the October 20, 2015 Order for Final Decree and Closing Case in Error, the opposition to this Motion pending, and that Order is vacated. Dckt. 87.
>
> **IT IS FURTHER ORDERED** that the Clerk of the Court shall not close this case and enter a final decree until after December 15, 2015.

20. 15-26328-E-13 GUADALUPE MARTINEZ
DPC-2 Pro se

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-23-15 [24]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

The case having previously been dismissed, the Objection to Debtor's Claim of Exemptions is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Claim of Exemptions having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

21. 15-22730-E-13 CHARLES/MARYLOU HODGE
SS-4 Scott D. Shumaker
DEBTOR DISMISSED: 9/14/2015
JOINT DEBTOR DISMISSED: 9/14/2015

MOTION TO CONFIRM PLAN
9-8-15 [85]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

22. 11-26447-E-13 SCARLET BAIN
DPC-2 Robert W. Fong

OBJECTION TO CLAIM OF UNIVERSITY OF CALIFORNIA LOS ANGELES, CLAIM NUMBER 3
9-14-15 [31]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 27, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Claim of University of California, Los Angeles, Claim Number 3, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Claim of University of California, Los Angeles, Claim Number 3 was dismissed without prejudice, and the matter is removed from the calendar.**

23. 15-26252-E-13 RALPH/CHRISTINA CONCHAS
DPC-1 Julius M. Engel

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
9-30-15 [21]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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 30, 2015. By the court's calculation, 27 days' notice was provided. 14 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.

The court's decision is to continue the Objection to 3:00 p.m. on November 17, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors held on September 24, 2015. The Meeting has been continued to 11:00 a.m. on October 22, 2015.

The Trustee requests that the court continue the Objection to 3:00 p.m. on November 17, 2015.

In light of the Meeting of Creditors being continued to 11:00 a.m. on

October 22, 2015 and the Trustee's Objection being based on the Debtor's failure to appear, the Objection is continued to 3:00 p.m. on November 17, 2015.

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 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 continued to 3:00 p.m. on November 17, 2015.

24. 15-24761-E-13 OAG-1 — CHRISTOPHER/GLEE WOODYARD — Oliver Greene — CONTINUED MOTION TO CONFIRM PLAN — 8-20-15 [21]

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

Christopher Woodyard Jr. and Glee Woodyard ("Debtor") filed the instant Motion to Confirm the Amended Plan on August 20, 2015. Dckt. 21.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on September 15, 2015. DCkt. 30. The Trustee objects on the on the ground of unfair discrimination to unsecured creditors. The Trustee asserts that the Debtor is proposing to pay the full amount of GM Financial's secured

claim of $12,733.00 for a 2007 Honda Accord in Class 2A of the plan. The Debtor has listed the value of this auto in the amount of $9,843.00 on Schedule D. However, the Debtor has failed to file a motion to value collateral. The Debtor is proposing a 0% dividend to unsecured creditors. According to the amended claim filed by GM Financial on July 16, 2015, Proof of Claim No.1, the auto contract was entered into on September 6, 2010 more than 910 days prior to filing the instant case.

DEBTOR'S RESPONSE

The Debtor filed a response on September 28, 2015. Dckt. 33. The Debtor states that the Debtor will file a Motion to Value the Collateral of GM Financial as to the 2007 Honda Accord.

OCTOBER 7, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 on October 27, 2015 to be heard in conjunction with the Motion to Value Collateral of GM Financial. Dckt. 41.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

On October 27, 2015, the court granted the Debtor's Motion to Value Collateral of GM Financial, valuing the Creditor's secured claim at $8,985.00. This resolves the Trustee's objection.

The Debtors have provided evidence in support of confirmation. No opposition to the Motion remains. Therefore, after the Trustee's objection being resolved and the court's own review of the Plan, the amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 20, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. 15-24761-E-13 OAG-2 CHRISTOPHER/GLEE WOODYARD Oliver Greene

MOTION TO VALUE COLLATERAL OF GM FINANCIAL
9-29-15 [34]

Final Ruling: No appearance at the October 27, 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, parties requesting special notice, and Office of the United States Trustee on September 29, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of GM Financial ("Creditor") is granted and the secured claim is determined to have a value of $8,985.00.

The Motion filed by Christopher M. Woodyard, Jr. And Glee A. Woodyard ("Debtors") to value the secured claim of GM Financial ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Honda Accord ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $8,985.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on September 6, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $12,903.18. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $8,985.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a)

is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Christopher M. Woodyard, Jr. And Glee A. Woodyard ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor] ("Creditor") secured by an asset described as 2007 Honda Accord ("Vehicle") is determined to be a secured claim in the amount of $8,985.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $8,985.00 and is encumbered by liens securing claims which exceed the value of the asset.

26. 13-28763-E-13 NADINE ADKINS — MOTION TO MODIFY PLAN
SJS-3 Scott J. Sagaria — 9-22-15 [61]

Final Ruling: No appearance at the October 27, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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. The 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. 11-20868-E-13 DPC-2 | **WAYNE WILKINSON AND DENISE ARMENDARIZ**
Andy C. Warshaw

OBJECTION TO CLAIM OF GOLDEN ONE CREDIT UNION, CLAIM NUMBER 17
9-14-15 [225]

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2015. By the court's calculation, 43 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 7 of The Golden One Credit Union is overruled without prejudice.

David Cusick, the Chapter 13 Trustee, ("Objector") requests that the court disallow the claim of The Golden One Credit Union ("Creditor"), Proof of Claim No. 17 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $5,211.00. Objector asserts that the Claim is a duplicate of Proof of Claim Number 5.

The only address served for Creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal

Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Additionally, the Trustee only provided 43 days notice for the instant Objection. Pursuant to Fed. R. Bankr. P. 3007(a) and Local Bankr. R. 3007-1(b)(1), 44 days notice is required.

Therefore, since the Trustee failed to give sufficient notice, the Objection is overruled without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of The Golden One Credit Union, Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 17 of The Golden One Credit Union is overruled without prejudice.

28. 14-29670-E-13 CHERRONE PETERSON — MOTION TO CONFIRM PLAN
PGM-5 Peter G. Macaluso — 9-11-15 [164]

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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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 Amended Plan without prejudice.

Cherrone Peterson ("Debtor") filed a Chapter 13 Plan on September 29, 2014. Dckt. 15. Debtor subsequently filed three amended plans prior to the current plan. The first, second, and third amended plans were denied by this court on January 29, 2015, March 26, 2015, and August 17, 2015 respectively. Dckt. 69, 107, 159. Debtor filed this Fourth Amended Chapter 13 Plan on September 11, 2015. Dckt. 167.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee"), filed opposition on October 13, 2015. Dckt. 170. Trustee asserts two grounds for denying the September 11, 2015 Fourth Amended Plan: Debtor's delinquency, and that the proposed Amended Plan is not Debtor's best efforts.

First, Debtor is $400.00 delinquent under the plan. Trustee asserts this delinquency is independent grounds for denying the proposed plan.

Second, Trustee asserts the plan is not Debtor's best efforts and that the plan is proposed in bad faith. The Plan provides for "Ascencion [sic] Capital Group/Capital one Auto Finance" for a 2005 Cadillac Escalade, with payments of $698.43 per month. Debtor's Plan also states the claim is not in default and matures after the completion of the plan; Schedules I and J appear to list the Debtor's and spouse's income and expenses include one car payment of $698.43. Dckt. 167, § 2.11.

However, the Proof of Claim #6 filed by Capitol One Auto Finance shows a default of $1,508.95 per month, a principal of $19,000.38, a value of property of $7,846.00, and annual contract interest of 18.25%. Trustee argues the secured claim may be subject to valuation, the interest rate may violate *In re Till*, and the claim will be paid in full in 36 months where the plan is a 60 month plan, leaving $16,542.72 available for general unsecured creditors. Dckt. 171.

On these grounds, Trustee requests the motion be denied and the plan not confirmed.

DEBTOR'S RESPONSE

Debtor's reply, filed October 20, 2015, asserts two grounds in response to Trustee's Objections. Dckt. 173. First, Debtor promises to be current on or before the hearing date.

Second, that "Debtor's unsecured creditors is a total of $6,183.12, which appears to calculate to a 100% under the present payment schedules, therefore this issue is resolved." Dckt. 173. No supporting evidence accompanies the reply.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The basis for the Trustee's first objection is that the Debtor is $400.00 delinquent in plan payments, which represents one month of the $400.00 plan payment. According to the Trustee, the Plan in § 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Debtor's promise to pay is not sufficient to cure the delinquency. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Trustee next alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

> [i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan–-(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to

unsecured creditors under the plan.

The Plan proposes to pay a 0% dividend to unsecured claims, which totals $0.00 of the $46,180.48 in the September 11, 2015 Amended Plan. Contrarily, Debtor now alleges, with no supporting evidence, that the Plan provides 100% to general unsecured creditors who now only hold $6,183.20.

While this discrepancy may be explained by a clerical error compounded by curing some of Trustee's asserted errors, Debtor fails to state with particularity what changes occurred to make this a 100% plan. Local Bankr. R. 9014(d)(1). While stating a "minimum" dividend amount, the proposed Fourth Amended Chapter 13 Plan clearly states,

> "**2.15. Class 7 consists of all other unsecured claims not listed as Class 5 or 6 claims.** These claims will receive no less than a 0.00 % dividend. These claims, including the under-collateralized portion of secured claims not entitled to priority, total approximately $ 46,180.48."

Plan, ¶ 2.15; Dckt. 167. This amount of unsecured claims is consistent with the Trustee's Notice of Filed Claims. Dckt. 113.

On the Reply, Debtor states that there is only $6,183.20 in unsecured claims. This conflicts not only with the Trustee's Notice, the Fourth Amended Plan, but the Motion filed by Debtor (Motion, p. 3:1-2; Dckt. 164).

The Fourth Modified Plan provides for plan payments totaling $11,245.00 through August 2015, and forty-nine additional monthly payments of $400.00 each (totaling $19,600 in additional payments). The aggregate payments under the Fourth Amended Plan will total $30,845.00.

From this $30,845.00 the following provision is made for disbursements:

Total Plan Payments	$30,845.00
Chapter 13 Trustee Fees (Est. 8%)	($2,467.60)
Debtor's Attorneys' Fees	($4,000.00)
Secured: PODS Secured Claim (Estimated from Proof of Claim No. 4)	($150.00)
Priority: Internal Revenue Service for 2011, 2012, and 2013 Taxes	($13,603.20)
Priority: Franchise Tax Board	($461.00)

Net Plan Monies For General Unsecured Claims	$10,163.20

Amended Proof of Claim No. 5 filed by the Internal Revenue Service asserts not only a $13,603.20 priority claim, but a $40,607.68 unsecured claim.

Other general unsecured claims are asserted by the following creditors:

Sacramento Municipal Utility District.....$2,111.31.
Proof of Claim No. 3

T Mobile.....$1,211.81
Proof of Claim no. 2

Cavalry SPV I, LLC.....$ 650.35
Proof of Claim No. 1

Checksmart.....$ 300.00
Proof of Claim No. 7

PayPal, Inc.....$ 191.23
Proof of Claim No. 8

Wells Fargo Bank, N.A.....$ 458.10
Proof of Claim No. 9

U.S. Trustee.....$ 650.00
Proof of Claim No. 11

Finally, Debtor seeks to divert monies to overpay Capitol One Auto Finance more than a 100% "bonus" over the value of its collateral and compound that by paying 18.25% interest. It appears this is being done to protect the non-debtor spouse who has not chosen to subject herself to the obligations of obtaining extraordinary bankruptcy relief, but seeks to burden the creditors to financially cover for her.

In reviewing Amended/Supplemental Schedule I, it is the non-debtor spouse who generates substantially all of the income for Debtor's household. Dckt. 163 at 5-6. This Amended/Supplemental Schedule I is likely ineffective as it purports to state the income and expenses since the commencement of this case in September 2014, but also state the changes in the income effective as of August 25, 2015. The same is true for the Supplemental/Amended Schedule J. Dckt. 163 at 7-10.

This attempt to divert monies to pay an obligation of a non-debtor, to the extent that it would survive the 11 U.S.C. § 524(a)(3) "secret" community claim discharge, and pay a more than 100% bonus and 18.25% interest manifests not merely possible lack of good faith, but affirmative bad faith by Debtor.

The contract upon which the Creditor's claim is based is dated November 11, 2010. The bankruptcy case was filed on September 24, 2014. That is 1,421 days before the instant bankruptcy case was filed (without taking into account leap-year). The court's review of the contract shows that only by the non-debtor, Cedric Peterson, signed the contract. Proof of Claim 6 Attachment. Only the non-debtor is listed on the Modification of Payment Agreement. *Id.* There is no indication that the Debtor has any personal liability for this obligation.

On Original Schedule B Debtor did not list as an asset the 2005 Cadillac Escalade which Debtor purchased, signed the contract for, and signed the loan modification. Dckt. 13 at 6. This creditor was not listed on

Original Schedule D. *Id.* at 8. (Debtor was not represented by his current counsel at that time.) With the subsequent assistance of counsel, Debtor listed the 2005 Escalade. The court notes that in Debtor's prior bankruptcy case 12-29092 (Schedule B, Dckt. 16), Debtor accurately listed the Escalade as an asset.

This attempt to "protect" a spouse from the responsibilities of bankruptcy and improperly divert monies does manifest bad faith. Additionally, this is not the Debtor's first, or second bankruptcy filings. Debtor and Debtor's spouse filed a Chapter 7 bankruptcy case on April 19, 2010, and received their discharge on August 5, 2010. 10-30003. Having their fresh start, the non-debtor went out and purchased a vehicle, agreeing to pay more than 19% interest. Proof of Claim No. 6 Attachment.

With the assistance of other counsel, Debtor filed a Chapter 11 case on May 10, 2012. 12-20902. That case was dismissed on November 14, 2012. Though seeking relief under Chapter 11, Debtor failed to file monthly operating reports. 12-20902; Civil Minutes, Dckt. 43.

This Chapter 13 case is not being prosecuted in good faith. Debtor is not complying with the Bankruptcy Code and is not properly providing for creditor claims.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the 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.

29. 10-47375-E-13 DAN HOWARD — MOTION TO MODIFY PLAN
SS-8 Scott D. Shumaker — 9-22-15 [113]

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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 32 days' notice was provided. 35 days' notice is required.

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.

Dan Howard ("Debtor") filed the Fifth Modified Plan and accompanying Motion to Confirm on September 22, 2015. Dckt. 113, 115.

Debtor's lifestyle and budget have changed significantly since filing the October 15, 2010 Plan. Debtor divorced his prior spouse, obtained a final judgment of dissolution, and now resides in a separate household. Further, Debtor's spouse "has converted to Chapter 7 and received her discharge." Dckt. 116 ¶ 8.

Another reason for filing the September 22, 2015 Modified Plan was to address Debtor's error in incurring debt without the court's approval. Debtor declares he took out $25,000.00 from his 401(k) because "I was unable to keep up with ongoing expenses that were now my sole responsibility; primarily, the mortgage obligation, which was then in arrears. I took out the loan because I just didn't know what to do at that point..." *Id.*, ¶ 9. Debtor used this money to pay:

A. $15,363.00 to Wells Fargo for mortgage payments and curing arrears;

B. $1,785.00 to a mechanic for vehicle repairs

C. $765.00 for new tires;

D. $989.00 in veterinary bills;

E. The remaining funds were placed in savings and used to pay either ongoing mortgage payments or support for Debtor's 18-year-old and 23-year-old.

Id..

Also, the reduction in payments from a loan modification with Wells Fargo changes Debtor's budget. Debtor asserts the loan modification "resulted in a payment reduction of $539 per month." *Id.*

SUMMARY OF DEBTOR'S REDUCTION IN EXPENSES

Debtor proposes to increase plan payments from $341.00 to $618.00, an increase of $277.00. Dckt. 8, 116 ¶ 9. Debtor asserts two grounds for being able to do so. First, the loan modification granted by this court reduces Debtor's payments to Wells Fargo by $539.00 per month. Dckt. 116, ¶ 9. Second, in comparing the September 22, 2015 Current Budget (Dckt. 116, Exhibit A) and the March 30, 2015 Current Budget (Dckt. 102, Exhibit 1), Debtor made the following changes:

Category of Expense	March 30, 2015 Budget	September 22, 2015 Budget	Change in Budget
Home Maintenance, repair, and upkeep expenses	$50.00	$25.00	<$25.00>
Water, sewage, garbage collection	$120.00	$82.00	<$38.00>
Telephone, cell phone, internet, satellite, and cable services	$96.00	$13.00	<$83.00>
Clothing, laundry, and dry cleaning	$100.00	$70.00	<$30.00>
Transportation (includes gas, maintenance, bus or train fare. Do not include car payments)	$250.00	$150.00	<$100.00>

Entertainment, clubs, recreation, newspapers, magazines, and books	$100.00	$50.00	<$50.00>
Vehicle insurance	$103.00	$94.00	<$9.00>
Pet care	$25.00	$10.00	<$15.00>
Total reduction in expenses			<$350.00>

Debtor states the same gross monthly income of $5,061.00. Dckt. 102, 117.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee ("Trustee") filed opposition on October 13, 2015. Dckt. 120. Trustee asserts two grounds for denial: first, that Debtor is delinquent; second, that the plan is not proposed in good faith.

On Trustee's delinquency grounds, Trustee reviews the history of three prior Motions to Confirm Modified Plans which have each been denied. Dckt. 61, 90, 109. Trustee's concern is that Debtor is now proposing a plan that pays $21,611.00, while the prior plan would require Debtor to pay $23,320.00 (a difference of $1,709.00). Currently, Debtor is $1,856.00 delinquent; despite Debtor's increased payments of $618.00 per month since May 2015, Debtor will not complete the plan until 3 months after the 60-month statutory cap for Chapter 13 plans.

Trustee's second objection is the plan was not proposed in good faith. While Trustee acknowledges that the $25,000.00 borrowed without court approval was partially accounted for, $6,098.00 of the funds withdrawn were not expressly allocated to certain types of payments.

Trustee does not oppose as long as Debtor reaches the confirmed plan's base balance of $23,320.00, even if it takes the Debtor 63 months rather than 60 months. Debtor has paid $20,993.00 to date. However, Trustee also questions whether Debtor has adequately addressed the court's concerns regarding the 401(k) loan. Dckt. 121.

DISCUSSION

The Trustee's objections are well-taken. A comparison of the prior proposed plan and the instant proposed plan shows that the Debtor did very little to alter the plan to address the concerns of the court and the Trustee.

The plan does not provide for or authorize the Trustee's prior disbursement to creditors nor does it even properly state at what month the proposed plan payments are to start. Furthermore, as noted by the Trustee, the Debtor still has attempted to get retroactive authorization for the 401k loan. However, the court has denied the request for retroactive approval because the

Debtor does not justify why the Debtor, three years later, is just now seeking approval. Once again, this raises serious concerns as to whether Debtor and Debtor's counsel are prosecuting this case with diligence.

The Debtors and a proposed modification runs afoul of the Debtors' election to just borrow money as they want, to pay bills they could not afford to pay, and then force those breaches of bankruptcy law on the court, creditors and Trustee on the theory, "oops, did I do that." This could well be a manifestation of bad faith in the prosecution of this case would could lead to dismissal (with or without prejudice). FN.1.

FN.1. The court notes that the Debtors are now divorced and that Josie Howard has elected to have her case converted to one under Chapter 7. The court is confident that the Chapter 13 Trustee will transmit to the Chapter 7 Trustee, concerns, if any, relating to Josie Howard's conduct in this case.

It may well be that the Debtor may elect to pay for the unauthorized borrowing from his discretionary expenses in the budget and not force creditors to pay for his breach of bankruptcy law.

This inability to attention on even the basic scale raises serious questions at not only the feasibility and viability of the plan, but whether the proposed plan is even close to the Debtor's best efforts. Filing a nearly identical proposed plan that the court had already denied is concerning to the court and a blatant waste of judicial resources, especially when the resulting modification would lessen the total paid into the plan from the confirmed plan's $23,320.00 to the proposed plan's $21,611.00.

Debtor has also compounded the problem by hiding the May 14, 2012 borrowing of the $25,000.00 until March of 2015 (when he filed the motion for the court to retroactively authorized the secret borrowing). Clearly Debtor knew that he had to obtain court authorization to borrow money, as in 2014 he, with the assistance of counsel, filed a motion for authorization to modify his home loan. Dckt. 94.

This bankruptcy case was filed on October 14, 2010. The motion for retroactive approval of the unauthorized $25,000.00 loan (which the Debtor has been paying himself back through his 401k plan) was filed on March 30, 2015. This is 1,066 days later. The hearing on the motion to retroactively approve the borrowing was set for hearing on May 5, 2015. This left only five months for the court to address the improper conduct and the Debtor properly deal with the finances through the plan. In effect, the Debtor's strategy to not disclose the unauthorized borrowing for more than thirty-five months has handcuffed the court. In effect, the strategy has been to dictate to the court that the Debtor himself has authorized the borrowing and there is nothing that the court, Trustee, or creditors can do about it.

Unfortunately, the short-term benefit of the secret loan may well require Debtor to dismiss this case and begin another five year plan to obtain relief under the Bankruptcy Code.

Much like the prior proposed plans, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the 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.

30. 13-31975-E-13 JACK/LINDA GANAS — MOTION TO MODIFY PLAN
PLC-4 Peter L. Cianchetta — 9-19-15 [79]

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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2015. By the court's calculation, 38 days' notice was provided. 35 days' notice is required.

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.

Jack and Linda Ganas ("Debtor") filed a petition for Chapter 13 relief on September 12, 2013. Dckt. 1. Debtor filed an original Plan on September 12, 2013, then a subsequent First Amended Plan on November 15, 2013; the November 15, 2013 Plan was confirmed on January 14, 2014. Dckt. 5, 28, 51.

Debtor now files a First Modified Plan on September 19, 2015, with accompanying Motion to Confirm. Dckt. 79, 82.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee") filed opposition to confirmation on October 13, 2015. Dckt. 87. Trustee asserts two grounds to deny confirmation: first, there is no filed loan modification with Wells Fargo; second, the Trustee asserts Debtor cannot afford to pay the monthly plan payments.

First, Debtor declares that Wells Fargo offered a loan modification, which Debtor intends to accept because "Jack was hurt on the job and is currently on Workers Compensation and SDI." Dckt. 81 ¶ 13. However, Trustee declares there is no record of the loan modification on the docket.

In part because the loan modification is not on the record, Trustee is unsure that Debtor can afford the proposed monthly plan payments. In addition, the amended Schedule I filed September 9, 2015, demonstrates a reduction in income from $5,178.88 to $4,405.67; the last Schedule J filed on September 12, 2013, reflects Debtor's monthly expenses as $3,096.00. Without an amended Schedule J, Trustee asserts that Debtor may only afford a monthly plan payment of $1,309.67.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

However, Trustee's objections are well-taken. In sum, Trustee's concern is that Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). A review of the court's docket shows no loan modification has been filed with the court; the only related document is a Notice of Mortgage Payment Change, filed by Wells Fargo Bank, N.A. on June 2, 2015. Further, Debtor's First Modified Plan asserts monthly payments of $2,017.91 in § 1.01, while the Additional Provisions assert a Loan Modification has been filed for court approval; Debtor's Declaration asserts a plan payment of $1,300.00 on the assumption that a Loan Modification will be approved. Dckt. 81, 82. Both items rely on the assumption that the Loan Modification will be filed and approved, but no such document has been filed with the court. Debtor's Declaration also declares Debtor's expenses have remained steady at $3,096.00. Dckt. 81. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

The Motion to Confirm the 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.

31. 11-48876-E-13 DARRELL/TANNIKA PARRISH — MOTION TO MODIFY PLAN
SDB-2 W. Scott de Bie — 9-16-15 [36]

Final Ruling: No appearance at the October 27, 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 September 17, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. 14-23385-E-13 JHW-1 MICHELE WILLIAMS Peter G. Macaluso

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 8-21-15 [99]

LAND ROVER CAPITAL GROUP VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 21, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

pleadings.

The Motion for Relief From the Automatic Stay is granted.

Michele Angelique Williams ("Debtor") commenced this bankruptcy case on April 1, 2014. Dckt. 1. Land Rover Capital Group ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2006 Landrover RS Sport, VIN ending in 7984 (the "Vehicle"). The moving party has provided the Declarations of Tina Gritte and Jennifer Wang to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant filed the instant Motion for Relief on August 21, 2015. Dckt. 99. Movant asserts that Debtor is delinquent under the confirmed plan. Dckt. 99, ¶ 6. The Wang Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of $7,510.00 in post-petition payments past due. Movant requests that this court terminate the automatic stay so Movant may pursue its claim under nonbankruptcy law. Movant also requests this court to waive the 14-day stay.

TRUSTEE'S RESPONSE

David Cusick, as Chapter 13 Trustee, filed a response on September 8, 2015. Dckt. 107. Trustee asserts that Debtor is delinquent $7,975.00 under the confirmed plan in payments to Movant. However, under the proposed third modified plan, Debtor is current.

DEBTOR'S OPPOSITION

Debtor filed an opposition on September 8, 2015. Dckt. 110. Debtor asserts that the Debtor filed a modified plan and Motion to Confirm for October 6, 2015. A review of the court's docket shows the modified plan and Motion to Confirm were both filed August 21, 2015. Dckt. 93, 97. Debtor also asserts that Creditor received a payment on August 31, 2015, and that Debtor's proposed modified plan creditor will receive monthly payments of $250 per month. Dckt. 110. Debtor requests that the court continue the motion until the hearing scheduled October 6, 2015 to decide the Motion to Confirm.

SEPTEMBER 22, 2015 HEARING

At the hearing, court continued the hearing to 1:30 p.m. on October 6, 2015 to be heard in conjunction with the Motion to Confirm. Dckt. 115.

OCTOBER 6, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on October 27, 2015 to determine if Debtor is current with the Movant. Dckt. 129

DISCUSSION

No supplemental papers have been filed in connection with this Motion.

On October 6, 2015, the court denied confirmation of the Debtor's third

proposed modified plan. Dckt. 127. Therefore, the substantial delinquency under the confirmed plan still exists. The Debtor has not provided any evidence that the Debtor is current with the Movant.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $36,256.65, as stated in the Gritte Declaration, while the value of the Vehicle is determined to be $12,000.00, as stated in Schedules B and D filed by Debtor.

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 since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

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, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The court shall issue an order terminating and vacating the automatic stay to allow Land Rover Capital Group, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Land Rover Capital Group (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset

identified as a 2006 Landrover RS Sport, VIN ending in 7984 ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

33. 11-47891-E-13 CLAY/MARIA QUINT — MOTION TO MODIFY PLAN
WW-2 Mark A. Wolff — 9-22-15 [31]

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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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.

Clay and Maria Quint ("Debtor") filed for Chapter 13 relief on November

30, 2011. Dckt. 1. Debtor's November 30, 2011 Plan was confirmed on February 21, 2012. Dckt. 25.

Debtor filed a First Modified Plan on September 22, 2015 and accompanying Motion to Confirm. Dckt. 31, 33.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed opposition to confirmation on October 13, 2015. Dckt. 37. Trustee asserts the plan may not be proposed in good faith, does not pay all projected disposable income received into the plan, and that the plan does not authorize interest paid to Class 2 creditor, Palace Resorts.

As evidence of these objections, Trustee points to numerous discrepancies in Debtor's filed documents. First, Debtor's September 22, 2015 Modified Plan proposes to reduce the commitment period from 60 months down to 47 months. Contrarily, Debtor's Current Monthly Income and Calculation of Commitment Period and Disposable Income indicates Debtor is over median income and the commitment period is 5 years Dckt. 1.

Second, Debtor's proposed plan provides for a lump sum payment of $25,000.00 in month 47; however, the monthly plan payments under the confirmed November 30, 2011 plan is $1,550.00. Dckt. 33.

Third, Debtor declares Debtor Clay Quint is retiring in 2 years; however, Debtor also claims his income will be reduced by 50%, until he receives his retirement income after 2 years. This pay reduction is due to Debtor Clay Quint going back to school. Thus, the reduction in pay is a voluntary reduction in hours, and Debtor projects income to reduce from $6,745.00 per month to $3,567.42.

Fourth, Debtor's projected income conflicts with Debtor's Schedule I, filed November 30, 2011, which projected retirement income of $5,300.00 per month (or 80% of base income). Dckt. 1, 34. Debtor's supplemental Schedule J, filed concurrently with the September 22, 2015 Modified Plan, projects negative monthly income of $604.53. Trustee has requested the last six months of pay stubs and bank statements for each Debtor. Dckt. 38.

Finally, Debtor's September 22, 2015 Modified Plan does not authorize interest paid to Class 2 creditor Palace Resorts. The confirmed November 30, 2015 Plan provides for 5% interest to the creditor; Trustee has accrued $773.89 in interest to the creditor. Dckt. 38.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objections are well-taken. First, the court agrees with the Trustee that the Debtor is an above-median income debtor and therefore, the applicable commitment period should be 60 months. Instead, the Debtor is proposing a 47 month plan. Additionally, the financial information provided for by the Debtor offers conflicting information as to the actual income. The Debtor's supplemental Schedule J filed on September 22, 2015, states that the Debtor has a monthly net income of negative $604.53, yet the plan proposes a

lump sum of $25,000.00 Dckt. 35. The Debtor's Motion nor Declaration offer any explanation of where the $25,000.00 is coming from but also how the Debtor can afford any plan when the Debtor has a negative monthly disposable income.

The Trustee's second objection is also well-taken. The plan does not provide for the 5.00% interest on the Placer Resorts' claim, which translates to the Debtor failing to provide for the full claim of the secured creditor.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options:

(1) provide a treatment that the debtor and secured creditor agree to, 11 U.S.C. § 1325(a)(5)(A),
(2) provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the Plan, 11 U.S.C. § 1325(a)(5)(B), or
(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

However, these three possibilities are relevant only if the plan provides for the secured claim.

Here, the Debtor provides for the claim, just not the entire claim, in this case, the 5.00% interest. Therefore, the objection is sustained.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the 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.

34.	**15-25094-E-13** **DPC-1**	**ALEX/MICHELE MARTINEZ** **Mark W. Briden**	**CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** **8-20-15 [33]**

Final Ruling: No appearance at the October 27, 2015 hearing is required.

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 20, 2015. By the court's calculation, 26 days' notice was provided. 14 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.

The court's decision is to continue the Objection to 3:00 p.m. on December 8, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor's previous motion to Value Collateral of Green Tree Servicing LLC was denied on August 18, 2015. The Trustee alleges that without the court valuing the secured claim, the Debtor cannot make plan payments.

SEPTEMBER 15, 2015 HEARING

At the hearing, the court continued the Objection to 3:00 p.m. on October 27, 2015 to be heard in conjunction with the Motion to Value. Dckt. 46.

DISCUSSION

The Debtor filed a Motion to Value Green Tree Servicing LLC on September 11, 2015. Dckt. 40. A review of the Motion shows that the Debtor once again listed Green Tree Servicing LLC as the creditor without providing any evidence that Green Tree Servicing LLC is the actual creditor rather than merely the loan servicer.

The court, rather than denying the Motion to Value, continued the Motion to allow Green Tree Servicing LLC to file properly authenticated

evidence to show that it is, in fact, the actual creditor.

In light of the Trustee's Objection being based upon the Motion to Value, the court continues the Objection to 3:00 p.m. on December 8, 2015 to be heard in conjunction with the Motion to Value.

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 continued to 3:00 p.m. on December 8, 2015.

35. 15-25094-E-13 MWB-2 — ALEX/MICHELE MARTINEZ — Mark W. Briden — MOTION TO VALUE COLLATERAL OF GREEN TREE SERVICING, LLC — 9-11-15 [40]

Final Ruling: No appearance at the October 27, 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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 11, 2015. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Green Tree Servicing LLC ("Creditor") is continued to 3:00 p.m. on December 8, 2015.

The Motion to Value filed by Alex Martinez and Michele Martinez ("Debtors") to value the secured claim of Assignee, Green Tree Servicing LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2725 Sandstone Drive, Anderson, California ("Property"). Debtor seeks to value the Property at a fair market value of $180,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed by Green Tree Servicing, LLC is the claim which may be the subject of the present Motion.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The Debtor has provided the alleged Assignment of Deed of Trust, dated on August 17, 2015. Dckt. 42, Exhibit A. The Assignment states the following:

> For value received, the undersigned holder of a Deed of Trust (herein "assignor") whose address is c/o 7360 South Kyrene Road, Tempe, AZ 85283, does hereby grant, sell, assign, transfer and convey, unto Green Tree Servicing, LLC (herein "Assignee"), whose address is 7360 South Kyrene Road, T-314, Tempe, AZ 85283, all beneficial interest under a certain Deed of Trust described below and obligations therein described, the money due and to become due thereon with interest, and all rights accrued or to accrue under such Deed of Trust.

Dckt. 42

The signature block of the "Assignor" states it is signed by:

> HSBC Finance Corporation as successor servicer to Beneficial Financial Inc. a California corporation, on behalf of itself and as successor by merger to Beneficial California Inc. by its Attorney-in-Fact Green Tree Servicing LLC

Dckt. 42.

First, the court notes that there is no such position of "holder of a Deed of Trust." A party can be a holder of a Note endorsed in blank and a party can be the beneficiary of a Deed of Trust - however, a party cannot be the holder of a Deed of Trust.

Second, based on the language of the signature block, Green Tree Servicing, LLC appears to be the Attorney-in-Fact for HSBC Finance Corporation, who is stated to be the "successor servicer." Essentially, the signature block states that HSBC Finance Corporation is not, in fact, the beneficiary of the Deed of Trust or the holder of the Note, but instead is the successor servicer, which makes Green Tree Servicing LLC, the servicer of a servicer. This representation does not indicate that there was actually any assignment of the underlying Note or the Deed of Trust which would entitle Green Tree Servicing LLC to be the creditor in fact.

Third, this Assignment does not appear to have been recorded. The alleged Assignment does not have a evidence that it was recorded with the Shasta County Recorder's Office nor does a search of the Shasta County's website provide any evidence that such Assignment was recorded. FN.1.

FN.1. http://apps.co.shasta.ca.us/riimspublic/Asp/ORPublicDocNameList.asp

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A review of the Proof of Claim No. 3 does not provide any further insight. The Proof of Claim was filed by Katelyn R. Knapp, as attorney for Green Tree Servicing LLC. The Proof of Claim names Green Tree Servicing LLC as the creditor. Ms. Knapp is an attorney with a Southern California law firm and does not appear to be an employee of or have personal knowledge of the business operations of Green Tree Servicing, LLC. As discussed above, the documents attached to the Proof of Claim, which Ms. Knapp has signed under penalty of

perjury do not document how Green Tree Servicing, LLC has ended up being the creditor.

Attached to the Proof of Claim is the Loan Agreement. The Loan Agreement states that the lender is "Beneficial California Inc." The Amount Financed is stated to be $25,099.31. Later on in the Loan Agreement, in the About Your Loan Repayment section beginning on page 4, states that the Amount Financed is $25,099.31 and the Principal as $26,378.74.

The Debtor does not provide any evidence that shows that the Note, endorsed in blank, is held by Green Tree Servicing LLC or that the unrecorded Assignment does anything more than transfer the servicing rights. The missing link is over whether HSBC Finance Corporation has, in fact, at any point been the holder of the Note (whether endorsed in blank or otherwise) or that it has been assigned as the beneficiary under the Deed of Trust.

This is Debtor's second attempt at the Motion to Value.

It appears that Green Tree Servicing LLC is not providing actual evidence to the Debtor or the court that it is the creditor in fact. Instead, it appears that Green Tree Servicing LLC is providing unrecorded, nonsensical Assignments in the attempt of giving the appearance of being the holder of the Note or being the beneficiary of the Deed of Trust.

Rather than denying the Motion, the court continues the hearing to 3:00 p.m. on December 8, 2015, telephonic appearances permitted. Green Tree Servicing LLC shall file and serve all properly authenticated documents that evidence that Green Tree Servicing LLC is, in fact, the creditor either holding the Note endorsed in blank or otherwise or that Green Tree Servicing LLC is the beneficiary of the Deed of Trust on or before November 10, 2015. Any replies or oppositions shall be filed and served on or before November 24, 2015.

The Clerk of the Court will serve the instant order on Green Tree Servicing, LLC at both its registered agent of service and to Katelyn Knapp, the attorney who filed the Proof of Claim No. 3 on behalf of Green Tree Servicing, LLC.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Alex Martinez and Michele Martinez ("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 3:00 p.m. on December 8, 2015, telephonic appearances permitted.
>
> **IT IS FURTHER ORDERED** that Green Tree Servicing LLC shall file and serve all properly authenticated documents that evidence that Green Tree Servicing LLC is, in fact, the creditor either holding the Note endorsed in blank or

otherwise or that Green Tree Servicing LLC is the beneficiary of the Deed of Trust on or before November 10, 2015.

IT IS FURTHER ORDERED that any replies or oppositions shall be filed and served on or before November 24, 2015.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve the instant order on Green Tree Servicing, LLC at the following addresses:

Katelyn R. Knapp
Attorney for Green Tree Servicing LLC
MALCOLM CISNEROS, A Law Corporation
2112 Business Center Drive
Irvine, California 92612

Green Tree Servicing, LLC
Attn: Officer or Agent
345 St. Peter Street
Suite 600
Saint Paul, MN 55102

Ditech Financial LLC
Attn: Officer or Agent
1400 Landmark Towers
345 St. Peter Street
Saint Paul, MN 55102

Telephonic appearances are permitted for any persons or counsel who choose to appear. The court does not order Ditech Financial, LLC; Green Tree Servicing, LLC; or the attorneys for either to appear at the continued hearing.

In issuing the order, the court notes that the California Secretary of State does not list "Green Tree Servicing, LLC" as an entity authorized to do business in the State of California. http://kepler.sos.ca.gov/. The California Secretary of State now lists only Ditech Financial, LLC. A review of the LEXIS NEXIS corporate filing data base lists Green Tree Servicing, LLC as a historical name for Ditech Financial, LLC. This is consistent with a recent Wall Street Journal article relating to Green Tree Servicing, LLC being merged into and being a part of Ditech Financial, Inc., as part of a restructuring by the common parent holding company. Ditech Funding, LLC may also address how, with the merger the parties and courts are going to properly address relief being granted or relating to the interests of the entity formerly known as Greet Tree Servicing, LLC.

36. 13-34597-E-13 VAN PHAM **MOTION TO INCUR DEBT**
CA-2 Michael David Croddy **10-13-15 [38]**

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

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

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

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

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

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

The Motion to Incur Debt is denied without prejudice.

Van Pham ("Debtor") filed the instant Motion to Incur Debt. Dckt. 38. The motion seeks permission to purchase a 2012 Nissan Altima, which the total purchase price is $32,210.15, with monthly payments of $457.00 at 8.15% over 84 months.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on October 15, 2015. Dckt. 43.

The Trustee notes that in the Debtor's declaration, the Debtor states

that the Debtor will be able to make the payments by decreasing mortgage expenses and reducing the percentage to unsecured creditors. Dckt. 40.

The Trustee first opposes the Motion on the basis that the purchase of the Vehicle is not in the best interest of the estate because the Debtor has not explained why the purchase of an additional vehicle is necessary. The Debtor's Schedule B shows that the Debtor has three vehicles, one which is held for the Debtor's father and the other for the Debtor's non-filing spouse. The Debtor does not provide any evidence or argument why a fourth vehicle is necessary.

The Trustee's second opposition is based on the Debtor may not being able to make the plan payments. The Debtor has failed to present evidence as to how Debtor will reduce the mortgage expenses. The Debtor has also failed to file a proposed modified plan to confirm.

DISCUSSION

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

The Debtor does not address the reasonableness of incurring debt to purchase a fourth vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owns three vehicles according to her Schedule B. The Declaration nor the Motion provides any evidence as to why a fourth vehicle is necessary. The court does not find, based on the evidence presented, that the purchase of a fourth vehicle is necessary.

Additionally, the transaction is not best interest of the Debtor. It is unclear to the court how in good faith the Debtor could propose to purchase a fourth car by reducing the mortgage expenses and the percentage to unsecured. The Debtor has not proposed a modified plan and no supplemental budgets. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a fourth vehicle.

Therefore, the Motion is denied without prejudice.

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

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

IT IS ORDERED that the Motion is denied without prejudice.

37. 15-23397-E-13 JASON/SANDRA PERKINS — MOTION TO CONFIRM PLAN
EJS-3 Eric John Schwab — 9-8-15 [51]

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 Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 8, 2015. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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 Amended Plan.

Jason and Sandra Perkins ("Debtor") filed a Chapter 13 Plan on April 27, 2015. Dckt. 5.

Debtor filed a First Amended Plan on September 8, 2015, and accompanying Motion to Confirm. Dckt. 51, 53.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee ("Trustee") filed opposition to confirmation on October 9, 2015. Dckt. 60. Trustee objects on two grounds: that Debtor cannot make the payments, and that a Class 3 creditor is not provided

for in the plan.

Trustee argues that Debtor cannot make the payments under 11 U.S.C. 1325(a)(6) because the September 8, 2015 Amended Plan adds RAC lease in § 3.02, but fails to list this lease on Schedule G or the on-going lease payment of $177.00 on Schedule J.

Also, Debtor's original Plan previously provided for a 2001 Trailer in Class 3 to be surrendered. Debtor's September 8, 2015 Amended Plan does not provide for the 2001 Trailer, and Debtor failed to explain why the Trailer was taken out of the Amended Plan.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's objections are well-taken. The crux of the Trustee's two objections is that the Debtor does not provide full information as to the Debtor's current financial reality, namely the status of the 2011 Trailer and the failure to provide for the on-going lease payment in the Debtor's schedules. As to the lease, a review of the Debtor's Schedules shows that the Debtor does not list the RAC lease on Schedule G (or even on Schedule F accidently) nor is a lease payment provided for on Schedule J. Dckt. 1. This failure to list the lease on the schedules but provides for it in the plan raises concerns over whether the Debtor has provided all necessary information to determine the feasibility and viability of the plan. This is highlighted by the fact that the lease is not listed on Schedule J, which raises concerns if the net monthly income states is an accurate reflection of the Debtor's finances.

As to the 2001 Trailer, the failure to provide for the creditor in the plan and failing to disclose the actual status of the Trailer further raises concerns over whether the Schedules and the plan are an accurate representation of the Debtor's finances. Without accurate and full disclosure of the Debtor's finances, the plan is not confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the 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.