UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 15, 2015 at 3:00 p.m.

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1. 15-24500-E-13 RAMONA/ROBERT JONES — AMENDED MOTION TO CONFIRM PLAN
DPC-4 Pro Se — 11-3-15 [86]

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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Trustee, Ocwen Loan Servicing, and Franchise Tax Board on October 31, 2015. By the court's calculation, 45 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.

Ramona Jones and Robert Jones, Jr. ("Debtor") filed the instant Motion to Confirm the Amended Plan on November 3, 2015. Dckt. 86.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 1, 2015. Dckt. 92. The Trustee opposes on the following grounds:

1. The Debtor is $1,192.94 delinquent in plan payments. The Debtor has paid $4,771.88 into the plan to date.

2. The Debtor's Motion fails to comply with Fed. R. Bankr. P. 9013 and does not state with particularity the grounds for relief.

3. Debtor's first amended Motion refers to Debtor's second amended plan. A review of the docket shows that no second amended plan has been filed.

4. Debtor's failed to file a declaration in support of the Motion, setting forth all components required under 11 U.S.C. § 1325(a).

5. The declaration of Alexis Scales does not include any information in support of the Motion.

6. Two Certificates of Service appear in the court record, both signed by Ms. Scales. The first Proof of Service states that the 1st Amended Motion to Confirm and 1st Amended Notice of Hearing has been served on Ocwen Loan Servicing, c/o Brian H. Tran, Esq., and State of California, Franchise Tax Board. Dckt. 89. The second Proof of Claim indicates that the 1st Amended Motion to Confirm, 1st Amended Notice of Hearing, and 2nd Amended Chapter 13 Plan have been served on David P. Cusick, Trustee. Dckt. 90. The Trustee asserts that the documents do not appear to be adequate from the record.

7. The Trustee filed a Motion to Dismiss Case which was continued to January 20, 2016 to offer the Debtor the opportunity to retain counsel. To date, the Debtor has not hired counsel.

DISCUSSION

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

Failure to Comply with Fed. R. Bankr. P. 9013

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. The Debtors' case was commenced under chapter 13 on June 2, 2015.

B. The meeting of Creditors was held on July 16, 2015.

C. The Debtors' mandatory debt counseling has been completed and filed with the court on 8/9/15.

D. The Debtors 1st amended chapter 13 plan was filed on 8/13/15.

E. The proposed 2nd amended plan meets the Bankruptcy Code requirements for Confirmation

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states the procedural background of the case and that the second plan complies with the Bankruptcy Code. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations

> supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.,* 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Additionally, the Debtor has failed to file a declaration by the Debtor providing evidence that the proposed plan complies with the Bankruptcy Code. It is necessary for the Debtor to file evidence "establishing its factual allegations." Local Bankr. R. 9014-1(d)(7). The Debtor has failed to do so.

In fact, the Debtor is seeking to confirm a proposed plan that the Debtor has not, in fact, filed or served. The Debtor states in the Motion that the second modified plan complies with the Bankruptcy Code. However, there are only two plans filed: the original and the first modified. To date, the Debtor

has failed to file a confirmable plan.

Other Grounds for Denying Confirmation

The basis for the Trustee's objection is that the Debtor is $1,192.97 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Debtor's Proof of Service also indicates that the Debtor has not provided sufficient notice and service to parties in interest. Pursuant to Fed. R. Bankr. P. 2002(b), the Debtor shall give "the debtor, the trustee, all creditors and indentured trustees" notice of a Motion to Confirm. The Debtor appears to have only served three parties: (1) the Chapter 13 Trustee; (2) Ocwen Loan Servicing; and (3) Franchise Tax Board. A review of the Debtor's schedules shows that there are additional creditors that needed to be served but were not. This is an independent ground to deny confirmation.

Therefore, based on the foregoing, 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.

2. 15-29301-E-13 CONNELL JOHNSON **MOTION TO VALUE COLLATERAL OF**
MMM-1 Mohammad Mokarram **SANTANDER CONSUMER USA, INC.**
12-1-15 [11]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Value secured claim of Santander Consumer USA, Inc.("Creditor") is granted and the secured claim is determined to have a value of $9,410.00.

The Motion filed by Connell Lloyd Johnson III ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Dodge Avenger SE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $9,410.00 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).

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 2, 2015. Dckt. 15. The Trustee simply argues that because the Creditor has not filed a claim in the case, the Trustee is uncertain if the Debtor can value the property when there is no allowed claim on file. The Trustee cites only to 11 U.S.C. § 502(a).

DISCUSSION

Trustee's Opposition

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--
>
> > (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
> >
> > **(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.**

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not stip the lien. Even reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court value the creditor's secured claim pursuant to § 506(a) is not supported by the Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for

filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

> (a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R. Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee’s suggestion that a proof of claim is necessary for the debtor to value a secured claim would lead to a very troubling dysfunctional in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor’s secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee’s premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page “opposition” of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee’s opposition is overruled.

Valuation of the Secured Claim

The lien on the Vehicle’s title secures a purchase-money loan incurred in March 1, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $. 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 $13,910.00. *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 Connell Johnson III ("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 Santander Consumer USA, Inc. ("Creditor") secured by an asset described as 2013 Dodge Avenger SE ("Vehicle") is determined to be a secured claim in the amount of $9,400.00, 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 $9,400.00 and is encumbered by liens securing claims which exceed the value of the asset.

3. 15-28603-E-13 RICARDO SANCHEZ MOTION TO COMPEL
TOC-1 Richard Sturdevant 12-2-15 [19]

Tentative Ruling: The Motion to Compel 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 NOT 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 December 2, 2015. By the court's calculation, 13 days' notice was provided. 14 days' notice is required.

The Motion to Compel 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 Compel is denied.

Stoneridge Westbridge Shopping Center, LLC ("Creditor") filed the instant Motion to Compel Immediate Payment of Post-Petition Lease Obligations on December 2, 2015. Dckt. 19. The Creditor seeks an order compelling Ricardo Sanchez to immediately pay the post-petition rent and charges due under an unexpired lease, including deeming the lease rejected and ordering surrender of the premises if no payments are made, and for attorney's fees.

The Creditor states that the Debtor is presently operating a business at the shipping center. The Creditor asserts that Debtor and Debtor's counsel has not responded to written communications over the alleged statutory obligation of the Debtor under 11 U.S.C. § 363(d)(3) to timely pay the post-petition rents due.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on December 3, 2015. Dckt. 25. The Trustee states that the Debtor filed the instant case on November 4, 2015 and the First Meeting of Creditors is scheduled for December 17, 2015. The plan payment due December 25, 2015 in the amount of $5,071.00 has not yet been paid. The plan proposes to assume a lease to Potter-Taylor & Co.

DISCUSSION

Failure to Provide Sufficient Notice

First, the Creditor's Proof of Service states that the Motion and accompanying documents were served on December 2, 2015 - 13 days prior to hearing. This is insufficient notice. Pursuant to Local Bankr. R. 9014-1(f)(2), a minimum of 14 days notice is required. Here, the Creditor did not provide sufficient notice. Therefore, the Motion is denied.

The Lease is Provided for in the Proposed Plan

Even in light of the failure to provide sufficient notice, the Creditor does not provide a persuasive ground to order the Debtor to compel rent monies.

In support of the instant Motion, the Creditor filed the Declaration of T. O'Connor, the attorney of the Creditor. The Creditor states that he has attempted to reach Debtor's counsel but has not received a response to date. Additionally, Mr. O'Connor states that:

> Because the Debtor has not filed a plan, I have no idea whether the debtor was going to assume or reject the Lease.

Dckt. 22, ¶ 3.

This is not correct. The Debtor filed a plan on November 17, 2015, as stated by the Trustee. Dckt. 10. The proposed plan lists Potter-Taylor & Co. in Section 3 of the plan for executory contracts and unexpired leases. The declaration of Randy Bacchus states that he is the property manager employed by Potter-Taylor & Co., the managing agent for Creditor. Dckt. 21.

Pursuant to Section 3, the regular payment to Potter-Taylor & Co. is $2,908.58 a month. The plan states there is pre-petition arrears in the amount of $11,000.00 and the plan proposes to pay $183.33 per month to cure these arrears. Mr. Bacchus declaration states that the Debtor's monthly lease payment is $2,835.90 and that the Debtor has an outstanding balance of $7,167.30. Dckt. 21.

The language of Section 3 states:

> 3.01. Debtor assumes the executory contracts and unexpired leases listed below. Debtor shall pay directly to the other party to the executory contract or unexpired lease, before and after confirmation, all post-petition payments. Unless a different treatment is required by 11 U.S.C. § 365(b)(1) and is set out in the additional Provisions, pre-petition arrears shall be paid in full. The monthly dividend payment on account

of those arrears is specified in the table below.

Dckt. 10.

The Creditor's Motion is based on the incorrect assumption that there is no plan filed to deal with the curing of the Debtor's arrears nor indication that the Debtor has not indicated whether he seeks to assume the lease. From the Debtor's proposed plan, the Debtor intends to assume the lease and pay $183.33 a month over 60 months to cure the arrears. The Debtor, pursuant to the proposed plan, should pay directly to the Creditor all post-petition payments. If the Debtor fails to provide that, the correct enforcement is for the Creditor to file a Motion for Relief from the Automatic Stay to exercise the Creditor's nonbankruptcy law rights.

The Creditor has not presented sufficient grounds for the court to order the Debtor to compel the payment of rents when the proposed plan provides for not only the continued lease payments but also for the arrears owed. Therefore, the Motion is denied.

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

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

4. 11-44207-E-13 TIMOTHY/LORI HUEGEL
CK-3 Pro Se

MOTION TO APPROVE LOAN MODIFICATION
11-5-15 [57]

Tentative Ruling: The Motion to Approve Loan Modification 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 November 4, 2015. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Timothy and Lori Huegel ("Debtor") seeks court approval for Debtor to incur post-petition credit. Seterus Inc., loan servicer for Federal National Mortgage Association ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,369.00 a month to $1,473.10 a month. FN.1. The modification will not change the interest rate nor the principal amount owed. The arrearage in the mortgage payments will be cured.

FN.1. The court notes that the Motion seeks to enter into a Modification with

Seterus, Inc. However, a review of the attached proposed modification agreement states that the party entering into the modification is "Seterus Inc., loan servicer for Federal National Mortgage Association." Dckt. 60, Exhibit 2. The loan modification correctly identifies that it is Seterus acting as the servicer of Federal National Mortgage Association. The court sua sponte corrects this but Debtor and Debtor's counsel should be more cognizant in the future to correctly name the party.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on November 13, 2015. Dckt. 63. The Trustee states that he does not oppose the instant Motion. However, the Trustee does believe that the adjustments made in Debtor's expenses on supplemental Schedule J filed in support of the instant Motion are unreasonable. Dckt. 60, Exhibit 3. The Trustee states that he will be addressing this issue in other litigation.

DISCUSSION

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The modification provides for the reduction in the monthly mortgage payment in the amount of $895.90. The modification states that it is Seterus acting as the loan servicer for Federal National Mortgage Association.

While the Trustee notes that he takes issue with some of the changes in expenses, the Trustee does not oppose the modification itself nor does the Trustee state explicitly which expenses the Trustee takes issue with. There being no objection from the Trustee or other parties in interest as to the modification, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Timothy and Lori Huegel 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 court authorizes Timothy and Lori Huegel ("Debtor") to amend the terms of the loan with Seterus Inc., loan servicer for Federal National Mortgage Association, which is secured by the real property commonly known as 5784 Fagan Drive, Redding, California, on such terms as stated in the Modification Agreement filed as Exhibit 2 in support of the Motion, Dckt. 60.

5. 14-22717-E-13 MRL-1 — CHRISTOPHER/MARILYN VELAZQUEZ, Jeremy Heebner — MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE, 11-30-15 [22]

Tentative Ruling: The Motion to Value secured claim 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 December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Value secured claim of Internal Revenue Service ("Creditor") is granted and the secured claim is determined to have a value of $2,543.00.

The Motion filed by Christopher and Marilyn Velazquez ("Debtor") to value the secured claim of the Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the following personal property:

Asset	**Value**
Cash on Hand	$50.00
Bank of America; Checking and Savings Account	$20.00
Golden One Credit Union; Checking and Savings Account	$141.00
US Bank; Checking and Savings Account	$1.00
Deposit with Landlord of Rental Home	$800.00
Household Goods and Furnishings not exceeding $550.00 in value individually	$660.00
Clothes; not exceeding $550.00 in value individually	$200.00
Miscellaneous Jewelry	$100.00
Accidental Death and Dismemberment Policy (no cash value)	$1.00
State of California Retirement	$650.00
2013 Tax Refund	$200.00
2013 Chrysler 200	$16,464.00
2000 Dodge Ram Pickup	$4,142.00

("Assets"). Dckt. 24. The Debtor seeks to value the Assets at a replacement value of $23,429.00 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 A-L Finance and Capital One have senior liens of approximately $21,423.00 on Debtor's Assets, $537.00 of which "is over encumbered." Dckt. 1 Schedule D; Dckt. 24 ¶ 9. Debtor requests that the court value the secured claim at $4,679.69.

On December 10, 2015, the Internal Revenue Service filed Amended Proof of Claim No. 3, in which the Internal Revenue Service asserts a secured claim in the amount of $2,543.00. The total amount of the Internal Revenue Service claim is stated to be $ 19,254.12.

The Debtor further requests that the court determine that the balance of the Internal Revenue Service claim be paid as a general unsecured claim. Amended Proof of Claim No. 3 asserts a priority unsecured claim in the amount of $4,152.61, and the balance of $12,558.51 as a general unsecured claim. The prior secured claim asserted a $17,024.39 secured claim and a $2,224.08 priority claim. Amended Proof of Claim No. 3 filed on May 29, 2014.

The court grants the Motion, determining the secured claim of the Internal Revenue Service to have a value of $2,543.00. The court does not determine the character of the unsecured claim in the context of a motion to value secured claim pursuant to 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 James Kennedy ("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 the Internal Revenue Service ("Creditor"), secured by the following personal property

Asset
Cash on Hand
Bank of America; Checking and Savings Account
Golden One Credit Union; Checking and Savings Account
US Bank; Checking and Savings Account
Deposit with Landlord of Rental Home
Household Goods and Furnishings not exceeding $550.00 in value individually
Clothes; not exceeding $550.00 in value individually
Miscellaneous Jewelry
Accidental Death and Dismemberment Policy (no cash value)
State of California Retirement
2013 Tax Refund
2013 Chrysler 200

2000 Dodge Ram Pickup

("Assets"), is determined to be a secured claim in the amount of $2,543.00, and the balance of the claim as a unsecured claim(s) to be paid through the confirmed bankruptcy plan as otherwise required by the Bankruptcy Code. The value of the Assets is $23,429.00 and is encumbered by liens securing claims which exceed the value of the asset.

6. 15-26620-E-13 KEVIN/DEBRA JOHNSON
BLG-1 Paul Bains

CONTINUED MOTION TO VALUE COLLATERAL OF NATIONWIDE ASSETS, LLC
8-31-15 [13]

Tentative Ruling: 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). The Defaults of the non-responding parties are entered by the court.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on August 31, 2015. By the court's calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Nationwide Assets, LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Kevin D'Andre Johnson and Debra Johnson ("Debtor") to value the secured claim of Nationwide Assets, LLC ("Creditor") is accompanied by Debtor's declaration. Dckt. 13. Debtor is the owner of the subject real property commonly known as 160 De Paul Dr, Vallejo, California ("Property"). Dckt. 15. Debtor seeks to value the Property at a fair market value of $226,000.00 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). FN1.

FN.1. Debtor has not provided the court with a basis for determining that the reference to an out of court statement from a Zillow.com report is admissible hearsay. Fed. R. Evid. 802, 803. The court will not presume to make evidentiary legal assertions for Debtor, which may or may not be so intended. Some common Hearsay Rule exceptions include records of regularly conducted activity, public records and reports setting forth the activities of the public agency or observed pursuant to a duty imposed by law, and market reports, commercial publications." Fed. R. Evid. 803(6), (8), and 803(17). However, this defect is moot as the debtor's valuation is presumptively valid.

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 filed an opposition on September 21, 2015. Dckt. 22. Creditor argues that Debtor has failed to provide sufficient evidence to value the real property at $226,000.00, and presents evidence that the value is $235,000.00. In the alternative, Creditor requests a continuation for time to value the interior and exterior of the real property. *Id.*

Creditor cites to *In re Meeks* to support the assertion that Debtor's opinion of value is not sufficient because Debtor did not make a showing of expertise in the field. *See In re Meeks*, 349 B.R. 19, 22 (Bankr. E.D. Cal. 2006). *T*he Debtor in *In re Meeks* provided lay person testimony on the value of the house, while the Creditor also presented evidence from an expert under Federal Rules of Evidence 702. *Id.*

Here, Creditor asserts that the testimony in Declaration of Theautis Persons rebuts the testimony of Debtor. Dckt. 15 (Debtor's Declaration); Dckt. 24 (Declaration of Theautis Persons). Creditor also requests a continuation to allow Persons time to conduct an exterior and interior valuation, as Persons' valuation is based only on the exterior. Dckt. 22, 24 ¶ 5. FN2.

FN.2. The court notes two deficiencies in Creditor's evidence. First, Creditor presents no evidence to establish Persons as an expert, but merely asserts the conclusion that Persons is an expert. Fed. R. Evi. 702; Dckt. 22. Second, Creditor references a "Nationwide BPO" attached as Exhibit 1. Dckt. 22 p. 3. However, Creditor's Exhibit 1 is the Schedule D Debtor filed with Debtor's petition, valuing the real property at $226,000.00. Dckt. 23 Ex. 1. Exhibits 2, 3, and 4 are the Note, Deed of Trust, and Assignment of Deed of Trust, none of which assert a value for the real property. Id. Ex 2-4.

OCTOBER 6, 2015 HEARING

At the hearing, based on the stipulation of the parties, the court continued the hearing to 3:00 p.m. on November 17, 2015. Dckt. 34.

NOVEMBER 17, 2015 HEARING

At the hearing, the parties reported that they have received the Creditor's appraisal and they are negotiating. Dckt. 46. In light of this, the court continued the Motion to 3:00 p.m. on December 15, 2015.

DISCUSSION

To date, neither party has filed a response to the instant Motion. The court infers that Creditor has conducted the discovery and has no evidence to

present that counters Debtor's evidence.

The court continued the hearing in response to the stipulation of the parties for the Creditor to conduct an appraisal of the Property. However, no such reports or supplemental responses have been filed.

Reviewing declaration of Theautis Persons, Mr. Persons states the following:

> Pursuant Movant's request, I reviewed the Property, conducted na exterior inspection of the Property and compared the Property to other comparable units in the area to derive a valuation.
>
> My opinion of the value of the Property as of September 16, 2015, based upon the information that I have been able to father to dater concerning, among other things, the current market conditions in the subject area, is that as of September 16, 2015, the Property had a current market value of $235,000.00. A true and correct copy of my Broker's Price Opinion Report on the Property is attached as Exhibit "1" hereto and incorporated herein by reference.

Dckt. 24. However, the Creditor failed to attach the report of the appraisal.

Mr. Persons' valuation was admittedly based on the exterior of the Property. Mr. Persons does not provide further specifics as to the process used nor is there any evidence that the valuation determination based solely on the exterior is sufficient to rebut the Debtor's own valuation.

The Debtor values the Property at $226,000.00 based on their opinion and the knowledge of the surrounding home area. Mr. Persons' declaration and valuation does not provide sufficient grounds to rebut that valuation. The difference between the two is $9,000.00 which in context of home value is relatively modest.

The court finds based on the evidence provided and the knowledge of the Debtor versus the exterior valuation of Mr. Persons, that the value of the Property is $226,000.00

The senior in priority first deed of trust secures a claim with a balance of approximately $230,219.91. Creditor's second deed of trust secures a claim with a balance of approximately $77,871.91. 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 Kevin D'Andre Johnson and Debra Johnson ("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 Nationwide Assets, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 160 De Paul Dr., 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 $226,000.00 and is encumbered by senior liens securing claims in the amount of $230,219.91, which exceed the value of the Property which is subject to Creditor's lien.

7. 15-26620-E-13 KEVIN/DEBRA JOHNSON
DPC-1 Paul Bains

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

Final Ruling: No appearance at the November 17, 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.

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.

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 hearing, 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.

At the November 17, 2015 hearing, the court continued the Motion to Value Collateral of Nationwide Assets LLC to 3:00 p.m. on December 15, 2015 based on the negotiations of the parties. Dckt. 46. The court continued the instant Objection with the Motion to Value.

On December 15, 2015, the court granted the Debtor's Motion to Value Collateral of Nationwide Assets, LLC, valuing the secured claim at $0.00.

Therefore, with the Trustee's objection being resolved 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.

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 the Objection is overruled, Debtor's Chapter 13 Plan filed on August 21, 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.

8. 11-23426-E-13 STEPHEN/JANET TOLLNER MOTION TO MODIFY PLAN
TJW-2 Timothy Walsh 10-30-15 [98]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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 grant the Motion to Confirm the Modified Plan.

Stephen and Janet Tollner ("Debtor") filed the instant Motion to Confirm the Modified Plan on October 30, 2015. Dckt. 98.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on December 1, 2015. Dckt. 116. The Trustee states:

1. The Debtor has failed to state any legal authority for the Motion. The Trustee believes the Debtor's motion is brought pursuant to 11 U.S.C. § 1329 and that the failure to cite such section was an oversight.

2. The feasibility of the Debtor's proposed plan is dependent on the Debtor's Motion to Value Collateral of Wells Fargo Bank,

N.A.

3. The monthly dividend for Class 2 creditor Internal Revenue Service of $210.00 is insufficient to pay the claim over the remaining 3 months of the plan. The claim amount is $11,211.90 plus approximately $2,130.00 in interest. The Trustee has a balance on hand of $19,962.48 as of December 1, 2015. The Trustee requests the order confirming order the Internal Revenue Service claim be paid in full from available funds.

DISCUSSION

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

As to the Trustee's first response, he is correct that the Motion does not explicitly state 11 U.S.C. § 1329 as the grounds for the modification. However, like the Trustee notes, this appears to be a mere oversight. The Motion itself states with particularity the necessary information necessary for a modification. The Motion states the reasons for the modification, the alterations made, the current financial status of the Debtor, and the proposed treatment of various claims.

The court granted the Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. and therefore the Trustee's objection is overruled.

As to the Trustee's third response, the Trustee is correct the proposed treatment for the Internal Revenue Service claim in Class 2 is insufficient for it to be paid in total before the end of the plan. However, as further stated by the Trustee he has sufficient monies to pay the claim.

The Internal Revenue Service claim in this case is stated to be:

A. Secured.....$11,211.99 (with 3% interest)

B. Priority.....$74,200.86

C. General Unsecured.....$15,958.85

Amended Proof of Claim No. 29, filed June 1, 2011.

Under the proposed Second Modified Plan, Debtor lists the Internal Revenue Service having a secured claim in the amount of $11,211.99, which is to be paid with an interest rate of 4% per annum, with a $210.00 monthly dividend. Dckt. 102. Under the existing confirmed plan in this case, Debtor did not provide for any secured claim of the Internal Revenue Service, but for a $92,460.00 priority claim. Plan, Dckt. 5.

The proposed Second Modified Plan also provides for payment of a $74,220.86 priority unsecured claim of the Internal Revenue Service.

No Additional Provisions are included for the proposed Second Modified Plan to explain what Debtor states has been paid and what remains to be paid for the secured and priority unsecured claims of the Internal Revenue Service.

For the secured claim, heretofore not provided for in the Plan, the

Trustee reports that he is holding $19,962.48, which is sufficient to pay the secured claim of $11,211.90, plus interest estimated to be $2,130.00. Response, Dckt. 116.

The payment of the Class 2 claim of the Internal Revenue Service by the Trustee is not an amendment to the proposed plan, but merely for a lump sum distribution of monies paid into over the life of the plan and currently held by the Trustee. The order confirming shall so authorize the disbursement by the Trustee.

The modified Plan does comply 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 Motion to Confirm the Plan is granted and the Second Modified Plan filed on October 30, 2015, is confirmed. The order confirming the Plan shall expressly authorize to pay the Internal Revenue Service in full for its secured claim in the principal amount of $11,211.90, plus all interest accruing thereon, in one lump sum payment from the monies held by the Trustee. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

9. 11-23426-E-13 STEPHEN/JANET TOLLNER
TJW-3 Timothy Walsh

MOTION TO APPROVE LOAN MODIFICATION
11-2-15 [104]

Final Ruling: No appearance at the December 15, 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, creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification 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 Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Stephen and Janet Tollner ("Debtor") seeks court approval for Debtor to incur post-petition credit. Deutsche Bank National Trust Company as Trustee for JP Morgan Mortgage Acquisition Trust 2007-CH1, Asset Backed Pass-Through Certificates, Series 2007-CH1 ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,501.20 a month to $1,753.09 a month. The monthly payment will increase to $1,582.45 at 3% plus adjusted escrow on the sixth year. The payment will then increase to $1,755.35 at 3.750% plus adjusted escrow on the seventh year through the 22nd year, with a final balloon payment in the amount of $296,137.29 due at the end of the 23rd year.

The Debtor notes that Chase Home Finance LLC as servicing agent to Creditor, filed Proof of Claim No. 33 on April 4, 2011. On August 8, 2012, the Creditor filed an amended Proof of Claim No. 7 pursuant to the terms of the instant modification request.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 1, 2015.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Stephen and Janet Tollner 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 court authorizes Stephen and Janet Tollner ("Debtor") to amend the terms of the loan with Deutsche Bank National Trust Company as Trustee for JP Morgan Mortgage Acquisition Trust 2007-CH1, Asset Backed Pass-Through Certificates, Series 2007-CH1, which is secured by the real property commonly known as 43 Rolling Oak Drive, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 107.

10. 11-23426-E-13 STEPHEN/JANET TOLLNER
TJW-4 Timothy Walsh

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
11-3-15 [109]

Tentative Ruling: 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). The Defaults of the non-responding parties are entered by the court.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2015. By the court's calculation, 12 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). 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. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Stephen and Janet Tollner ("Debtor") to value the secured claim of Wells Fargo Bank N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 443 Rolling Oak Dr., Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $391,331.00 as of the petition filing date. Dckt. 111 ¶ 1. 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.

DISCUSSION

The first deed of trust secures a claim with a balance of approximately $479,597.95. Creditor's second deed of trust secures a claim with a balance of approximately $88,266.95. 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 ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank N.A. secured by a second deed of trust recorded against the real property commonly known as 443 Rolling oak Dr., Vacaville, 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 $391,331.00 and is encumbered by a senior lien securing a claim in the amount of $479,597.95, which exceeds the value of the Property which is subject to Creditor's lien.

11. 11-48227-E-13 CHERYL WATTS **MOTION TO MODIFY PLAN**
CYB-1 Candace Brooks **11-3-15 [43]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 3, 2015. By the court's calculation, 42 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 grant the Motion to Confirm the Modified Plan.

Cheryl Watts ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 3, 2015. Dckt. 43.

TRUSTEE'S LIMITED OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a limited opposition to the instant Motion on December 1, 2015. Dckt. 53. The Trustee notes that the proposed plan states in Section 6.1 that creditor Fast Auto & Payday Loans, Inc. has been paid a total of $2,300.12. The Trustee asserts that this is incorrect. The Trustee states that the creditor has received a total amount of $2,694.38, which includes principal and interest. The Trustee has no objection to the order confirming correcting the amount paid.

DEBTOR'S RESPONSE

The Debtor filed a response on December 8, 2015. Dckt. 56. The Debtor states that the Trustee's objection is correct and that the plan incorrectly states the amount paid to Fast Auto & Payday Loan, Inc. The Debtor requests that this error is corrected in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. It appears that there was a scrivener's error in the amount paid to Fast Auto & Payday Loans, Inc. in Section 6.1 of the proposed plan. The Trustee and the Debtor are both amicable to the amount being corrected in the order confirming. This would cure the Trustee's objection.

Therefore, following the correction in the order confirming and upon the independent review of the plan by the court, 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 November 3, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting Section 6.1 to reflect that Fast Auto & Payday Loans, Inc. has been paid a total of $2,694.38, 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.

12. 15-25142-E-13 VICTOR IBARRA **MOTION TO CONFIRM PLAN**
ET-6 Matthew Eason **10-28-15 [69]**

Final Ruling: No appearance at the December 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2015. By the court's calculation, 48 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 October 28, 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.

13. 15-25442-E-13 RICHARD SANCHEZ — MOTION TO CONFIRM PLAN
ET-2 Matthew Eason — 10-30-15 [40]

Final Ruling: No appearance at the December 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 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). 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 October 30, 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. 15-27853-E-13 DPC-1 — DIANA EVANS, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 11-24-15 [30]

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 (*pro se*)on November 24, 2015. By the court's calculation, 21 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 P. Cusick, the Chapter 13 Trustee, opposes confirmation of the

Plan on the basis that:

1. The Debtor failed to appear at the First Meeting of Creditors.

2. The Debtor failed to provide the Trustee with her employment payment advices.

3. The Debtor failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year.

4. The Debtor cannot make the payments under the plan or comply with the plan.

   a. Schedule J lists Debtor's net income as $104.52 while the plan calls for payments of $399.34.

   b. Section 2.15 of the plan is blank. The Debtor failed to list a dividend to the unsecured creditors.

   c. Debtor lists SLS Mortgage and HOA in Class 1 of the plan. Class 1 is incomplete as it fails to list the arrearage dividend and any interest rate on arrears. Schedule J lists an ongoing mortgage payment in the amount of $1,371.00.

   d. Schedule D is incomplete. Debtor failed to list the date claim incurred, nature of lien, description of secured property and the creditor's mailing address. Schedule D lists Ocwen Loan Servicing in the amount of $500.00, this debt is not provided for in the plan.

   e. Schedules E and F fail to list the creditor's mailing addresses.

   f. The Statement of Financial Affairs is incomplete. Debtor lists income in question #1 and provides no other information in the entire document.

   g. It does not appear the Debtor's creditors were noticed of the First Meeting of Creditors. The mailing matrix filed by the Debtor appears to be incomplete.

   h. Debtor has failed to list a prior Chapter 13 filing on the petition (Case No. 15-21350).

5. The Debtor's plan fails the Chapter 7 Liquidation Analysis. The plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. The Debtor has non-exempt equity in the total amount of $8,130.00. The Debtor is married and her spouse is not included in the bankruptcy. The Debtor has failed to file a Spousal Waiver for use of the California State Exemptions under the California Code of Civil Procedure § 703.140.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on November 30, 2015. December 14, 2015. Dckt. 34. The Debtor states that she is seeking legal advice. The Debtor states that she plans to be present at the hearing to present her opposition.

DISCUSSION

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

As to the Trustee's fourth objection, the court agrees that the Debtor's schedules and plan are not filled out completely. Without the necessary information, the court nor any other party in interest can determine whether the plan is viable or feasible. The Debtor has failed to provide for a dividend to unsecured creditors, proposes a higher plan payment than what is listed on the Debtor's Schedule J as disposable income, and fails to list all creditors in the mailing matrix to name a few. The Debtor has not provided any information why the Debtor did not properly and completely fill out the necessary forms. This failure is an independent ground to deny confirmation.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). While Debtor has reported non-exempt equity in the amount of $8,130.00 and the Debtor's plan does not specify a dividend to unsecured creditors, additional equity exists. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to an undisclosed dividend when there may be upwards of $8,130.00 in non-exempt equity.

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.

15. 15-27853-E-13 DIANA EVANS
MDE-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
11-2-15 [21]

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 (*pro se*), Chapter 13 Trustee and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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.

Deutsche Bank National Trust Company, as Trustee for GSR Mortgage Loan Trust 200-OA1, Mortgage Pass-Through Certificates, Series 2006-OA1 ("Creditor") opposes confirmation of the Plan on the basis that the plan does not provide for the curing of the Creditor's arrearages. The Debtor's plan only allows for the curing of the Creditor's arrearage in the amount of $8,221.00. However, according the Creditor's Proof of Claim No. 1-1, the arrearage amount due is $19,361.78.

The Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $19,361.78 in pre-petition arrearages. The Plan does not propose to cure these arrearages in full. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

16. 15-27759-E-13 MICHAEL/NAOMI ALFORD
DPC-1 Peter Macaluso

OBJECTION TO DISCHARGE BY DAVID P. CUSICK
11-12-15 [17]

Final Ruling: No appearance at the December 15, 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 Debtors, Debtor's Attorney on November 12, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on November 12, 2015. Dckt. 17.

The Objector argues that Michael and Naomi Alford ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on September 15, 2012. Case No. 12-36729. The Debtor received a discharge on Mach 5, 2013. Case No. 12-36729, Dckt. 85.

The instant case was filed under Chapter 13 on October 1, 2015.

The Debtor filed a reply on November 30, 2015. Dckt. 22. The Debtor has no opposition to the instant Objection.

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

Here, the Debtor received a discharge under 11 U.S.C. § 727 on March 5, 2013, which is less than four-years preceding the date of the filing of the instant case. Case No. 12-36729, Dckt. 85. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 15-27759), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by 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 Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 15-27759, the case shall be closed without the entry of a discharge.

17. 15-27964-E-13 MARILYN KING
DPC-1 Timothy Walsh

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-17-15 [16]

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, Debtor's Attorney on November 17, 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. At the hearing ----------.

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the Meeting of Creditors held on November 12, 2015.

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year.

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. These are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

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.

18. 15-28165-E-13 DPC-1 — LEON VICENTE AND ANGELA XILOJ, Thomas Gillis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK, 11-24-15 [26]

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 Debtors, Debtor's Attorney on November 24, 2015. By the court's calculation, 21 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 P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor's plan relies on the Motion to Value Collateral of Ditech Financial LLC F/K/A Green Tree Servicing, LLC.

2. The Trustee has failed to provide the Trustee with the answers to certain question about the Debtor's business, set out in a Business Case Questionnaire mailed to the Debtor and other documentation (such as copies of bank statement, business tax returns, licenses, and any insurance policies.)

> An employee at Debtor's counsel's office sent an email to the Trustee the day before the First Meeting of Creditors with a PDF attachment consisting of business documents. The Trustee was unable to review the documents completely before the Meeting nor were the documents provided complete. The Trustee continued the First Meeting of Creditors to January 7, 2016 to allow him time to review the materials.

The Trustee's objections are well-taken.

The Motion to Value Collateral of Ditech Financial LLC F/K/A/ Green Tree Servicing, LLC was denied on December 8, 2015 for failing to name the actual creditor. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

As to the Trustee's second objection, the Debtor has been given the opportunity by the Trustee to provide for completed business documents prior to the continued Meeting of Creditors.

However, given that the Debtor's plan relies on value the collateral of an unknown creditor, since Ditech is primarily a loan servicer and the Debtor failed to provide evidence as to who the actual creditor is, the plan as presented cannot be confirmed.

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.

19. 12-40367-E-13 ADRIANA ECHANDIA MOTION TO MODIFY PLAN
CYB-3 Candace Brooks 10-28-15 [58]

Final Ruling: No appearance at the December 15, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2015. By the court's calculation, 48 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). 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 grant the Motion to Confirm the Modified Plan.

Adriana Exhandia ("Debtor") filed the instant Motion to Confirm the Modified Plan October 28, 2015. Dckt. 58.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition on December 1, 2015. Dckt. 67. The Trustee states that it is unclear what the dividend is meant to be for unsecured creditors. The modified plan lists the dividend as 0.017%. However, the supporting Motion states that the plan is intended to pay a 0.02% dividend to unsecured claims. The Trustee requests that the dividend to unsecured creditors be clarified in the order confirming.

DEBTOR'S RESPONSE

The Debtor filed a response on December 7, 2015. Dckt. 70. The Debtor states that the intended dividend to unsecured was meant to be 0.02%. The Debtor requests that this is clarified in the order confirming.

DISCUSSION

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

As admitted by the Debtor, the Debtor's plan misstates the dividend to be paid on the unsecured claims. While the plan states in Section 2.15 that the

dividend is 0.071%, the Debtor states the intended dividend is to be 0.02%.

After the court's own review of the plan, the Debtor's proposed plan complies with all relevant code sections. The error in the amount of dividend to unsecured claims appears to be a mere scrivener's error that can be corrected in the order confirming.

Therefore, after the correction of Section 2.15 to reflect a dividend to Class 7 creditors of 0.20% and with no other objections, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and I 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 October 28, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan correcting the dividend to Class 7 claimants to 0.02%, 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.

20. 15-25168-E-13 DEBRA MCCLAIN — MOTION TO CONFIRM PLAN
PLC-1 Peter Cianchetta — 10-21-15 [35]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 21, 2015. By the court's calculation, 55 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.

Debra McClain ("Debtor") filed the instant Motion to Confirm the Amended Plan on October 21, 2015. Dckt. 35.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on November 24, 2015. Dckt. 47. The Trustee objects on the following grounds:

1. The Debtor's plan may not entirely resolve the Trustee's prior objections, namely that the plan may take longer than 60 months to complete. Section 6 of the proposed plan calls for payments of $625.00 x 6 and $1,075.00 x 54 months. It also states that the "Debtor shall obtain new financing or sell the collateral securing the Class 2 claim of Dusty Sullivan, et al. to satisfy

said claim in full within 6 months of resolution of adversary proceeding 2015-02152." The Status Conference for the Adversary Proceeding is scheduled for January 20, 2016. The Trustee states it is not clear if the plan will complete in 60 months, where the plan fails to state an actual lump sum payment to be paid into the plan.

2. It appears that the Plan fails the Chapter 7 Liquidation Analysis because the Debtor has non-exempt equity that totals $15,985.17 when the plan proposes to pay unsecured creditors a 0% dividend.

CREDITOR'S OPPOSITION

Dusty Sullivan Profit Sharing Plan, Robert Chonka Profit Sharing Plan, Poly Comp Trust Company, and West America Bank for the benefit of Marilyn Chiang, Dean A. Howell Profit Sharing Plan, Kenneth Meyer IRA, Connie Snowdon formerly known as Connie Holt, Margo Glendenning, David N. Muraki and Judy Muraki as joint tenants custodian for Peter Muraki, and any other owners and beneficiaries of a deed of trust recorded November 19, 2003 as instrument No. 2003-0194949 ("Creditor") filed an opposition to the instant Motion on December 1, 2015. Dckt. 50.

In sum, the Creditor argues that the proposed plan does provide for the full claim of the Creditor and that the plan does not treat all claims in the secured class in the same manner. The Creditor is listed as a Class 2 claimant in the amount of $80,000.00. The Creditor asserts that $151,198.41 is owed on the claim.

The Creditor argues that the plan is not feasible because the Creditor's claim became due and payable in 2011 and does not provide for the full payment of the claim.

Lastly, the Creditor also objects that the Debtor's plan fails the Chapter 7 Liquidation Analysis because of the Debtor's non-exempt equity.

DISCUSSION

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

The Trustee and Creditor's objections are well-taken.

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.

Review of the Chapter 13 Plan

The First Amended Chapter 13 Plan now before the court was filed on October 21, 2015. Dckt. 38. The basic terms are as follows:

	Disbursement of Monies	
Monthly Plan Payment		
Months 1-6	$625.00	
Months 7-60	$1,075.00	
Monthly Disbursements	(Amortized over 60 Months)	
Chapter 13 Trustee (Est. 6%) Months 1-6	($37.50)	
Chapter 13 Trustee (Est. 6%) Months 7-60	($64.50)	
Chapter 13 Counsel Fees ($3,840)	($64.00)	
Class 1	None	
Class 2 Not Reduced for Value of Collateral		

Dusty Sullivan/Sierra Invst. Roseville Ridge Ct Collateral $80,000 Claim 12% Interest	($800.00)	Monthly Interest Only Payment (Effective Interest Rate is lower if computed on claim in amount stated by Creditors)
Capital One 539 Roseville Ridge Collateral $9,000 Claim 0% Interest	($150.00)	Sixty Month Amortization Payment
Class 3	None	
Class 4		
Citimortgage 539 Roseville Ridge Collateral		$1433.00 Paid Directly By Debtor
Class 5	None	
Class 6	None	
Class 7 **General Unsecured** $2,500 in Claims Est.	$0.00	0.00% Dividend

In reality, the first six months of Chapter 13 Plan payments total $3,750. After paying an estimated 6% Chapter 13 Trustee fee totaling $225.00 over those six months, there is 3,525.00 left over. This pays almost 100% of counsel fees, with no money left to otherwise fund the Plan.

The Plan further provides that for payment of the Dusty Sullivan/Sierra Investment claim only after litigation is completed in the pending Adversary Proceeding (Adv. 15-2152), and at that time it will occur only when Debtor in this Chapter 13 case obtains a refinance or sale of the property sufficient to pay all of the Class 2 creditors secured by the Roseville Ridge Ct. collateral.

The Motion to Confirm the First Amended Plan does not contain any grounds relating to this deferred payment of the Class 2 Claims. Dckt. 35. Though the Motion fails to comply with Federal Rule of Bankruptcy Procedure 9013, even looking at the declaration in support, Debtor provides no testimony about such provision, the litigation, or the ability to actually obtain a refinance or sell the property for enough to pay the Class 2 Claims.

Debtor does testify that currently her average monthly income is $2,819.38 and her average monthly expenses are ($2,260.00). Declaration, Dckt. 37. This yields the $625.56 a month payment. Debtor further states that she as “secured a roommate” who will pay $450.00 a month, which then allows her to increase the payment in month seven of the plan to $1,075.00. This bankruptcy case having been filed in June 2015, month 7 of the Plan will be either January or February 2015.

Review of Schedules

In attempting to understand the Plan, the court has reviewed Debtor's Schedules. On Schedule A Debtor lists the Roseville Ridge Ct. Collateral as having a value of $285,000.00 and being subject to liens of ($195,793.83). Dckt. 1 at 9. The math reflects Debtor asserting there to be a $90,000 equity in the property for the Debtor/Estate. Debtor claims a $75,000 exemption on Schedule C, reflecting a approximate $15,000 equity for the estate after the exemption. *Id.* at 14.

On Schedule D Debtor lists the undisputed secured claim of Citimortgage in the amount of ($140,891.83) and the undisputed secured claim of Capitol One in the amount of ($9,000). *Id.* at 16. The debt of Dusty Sullivan/Sierra Investments is listed as a disputed secured claim in the amount of ($45,902.00).

No priority unsecured claims are listed on Schedule E and one general unsecured claim in the amount of $2,500.00 is listed on Schedule F. *Id.* at 17, 18.

On Schedule I Debtor lists gross monthly income of $2,819.38. *Id.* at 21. From this Debtor lists deductions of ($433.82) a month for taxes, Medicare, and Social Security. *Id.* at 22.

Debtor lists having additional income of $500.00 a month for "interest and dividends." *Id.* This then yields by Debtor's calculations monthly income of $2,885.56. In reviewing Schedule B, the court cannot identify an asset which yields additional "interest" or "dividend" income of $500.00 a month.

On Schedule J, Debtor lists having an adult brother as a dependant. *Id.* at 23. No income is listed for this adult dependant.

Schedule J continues to list a total of $2,260.00 in monthly expenses. *Id.* at 23-24. Some of the monthly expenses stated under penalty of perjury which appear questionable (and for which no testimony in support of the current Motion is provided) include the following:

A. Electricity, Gas, Heat.....($ 40)

B. Water, Sewer, Garbage.....($ 35)

C. Food and Housekeeping Supplies.....($200)

D. Clothing, Laundry.....($ 5)

E. Transportation (registration, gas, repairs for one car).....($100)

F. Taxes (if $500 a month in interest or dividends).....($0)

On the Statement of Financial Affairs Debtor listing having gross earnings of approximately $20,000 a year from her employment. Statement of Financial Affairs Question 1, *Id.* at 26. This does not square with the $33,828.00 now listed for gross income on Schedule I. *Id.* at 21. No testimony is provided for a more than 50% increase in gross income.

Debtor also lists having an additional $500.00 a month from rental

income (room rental) for 2013, 2014, and 2015. Statement of Financial Affairs Question 2, *Id.* at 26-27. While not listed, it appears this could be the additional income stated to be "interest and divided" on Schedule I.

Review of Adversary Proceeding

On August 3, 2015, Debtor commenced an Adversary Proceeding, naming the following defendants in the Complaint:

A. Dusty Sullivan
B. Sierra Investments (an entity of Dusty Sullivan)
C. Dusty Sullivan Profit Sharing Plan
D. Robert Chonka Profit Sharing Plan
E. Westamerica Bank, Custodian (for 5 IRAs)
F. Dean Howell Profit Sharing Plan
G. David and Judy Muraki, Custodians

Complaint, Adv. 15-25168.

The court summarizes the major contentions in the Complaint as follows. Dusty Sullivan is a licensed real estate broker who acted as a mortgage broker in connection with a loan made to Debtor. The loan was made on September 26, 2006 for the sum of $80,000.00. The loan is secured by the Roseville Ridge Collateral. It is alleged that Dusty Sullivan misrepresented the terms of the loan.

The specific alleged misrepresentations as stated in the Complaint are: (1) "annual percentage rate is substantially incorrect;" (2) amount financed was $76,167.00; (3) finance charge should have been $52,633.00 (not $120,800); and "itemization of amount financed is not completed." *Id.* at 4, ¶ 21. Additionally, the California Mortgage Loan Disclosure Statement: (1) states a total of 62 months worth of payments, which conflicts with the TILA disclosure; and (2) a bullet point to be completed that the "loan may/will/will not" was not competed by selecting which of the three applies to the loan. *Id.*, ¶ 23.

It is alleged that ERISA violations exist because Dusty Baker charged a brokerage fee in connection with the portion of the loan which was made to his own retirement account to which he owed a fiduciary duty. It is further alleged that Mr. Baker was paid a fee for portions of the loans which were sold to pension plans for which he was not a fiduciary. It is further alleged that Mr. Baker and other investors engaged in other improper, unspecified transactions.

The First Cause of Action is an objection to the claim of all of the defendants, based on the loan having been a prohibited transaction under ERISA and unenforceable.

The Second Cause of Action is titled in declaratory relief, requesting a "declaration" that the "relief requested" requires the voiding and release of the Defendants' lien. It then further states that the Plaintiff requests that the court "reform" the obligation. The court is unsure what "declaratory relief" is proper based on these allegations, as opposed to there being an actual case or controversy concerning the actual rights and interests of the parties which have and are being enforced.

The Third Cause of Action identifies California common law and statutory fraud and unfair business practices as a basis for relief.

The Fourth Cause of Action lists state constructive fraud and unfair business practices statutory provisions as the basis for the claims therein.

Plaintiff also requests attorneys' fees pursuant to the contracts between the parties.

Attached as Exhibit A to the Complaint is a copy of a promissory note listing the various Defendants as payees. *Id.* at 17. The amount of the Note is stated to be $80,000.00. This Note form is not completed, but states that there is an Addendum, which is not included as part of Exhibit A attached to the Complaint. Exhibit B is a copy of a Deed of Trust, in which the various Defendants are listed as beneficiaries. *Id.* at 19. Exhibit C is the California Association of Realtor Disclosure Statement listing the amount of the loan to be $80,000.00, the interest rate to be 14.5%, the finance charge to be ($4,302.00), the amount financed to be $80,000.00, and the total payments for 61 months to be ($128,800.00). The monthly payments, for a period of 61 months, is stated to be ($800.00). *Id.* at 25. This form does not appear to be completed.

Exhibit C is the California Mortgage Loan Disclosure Statement Form. This lists there being an $80,000.00 loan, ($3,500) of the proceeds used to pay the broker's commission, ($802.00) to pay costs and expenses, and there being $75,698 estimated cash payable to borrower. It states that the loan is at 12% interest, with interest only monthly payments of ($800.00). It further states that the monthly payments are ($800) for sixty-one months, with a final balloon payment of ($80,000.00).

Proof of Claim No. 2

Seven of the Defendants filed Proof of Claim No. 2 (Westamerica Bank is not listed as a creditor on the Proof of Claim). The claim is asserted in the amount of $151,198.41. The attachments to Proof of Claim No. 2 includes a foreclosure notice identifying the following amounts which make up the debt computed to be $151,198.41:

A. Unpaid Principal.....($80,000.00)

B. Accrued Interest From 3/29/2010.....($50,362.12)

C. Accrued Late Charges.....($ -0-)

D. Compounded Interest.....($19,764.47)

E. Advance by Beneficiary.....($ 800.00)

F. Interest on Advance by Beneficiary.....($ 11.20)

G. Foreclosure Fees and Costs.....($ 255.62)

This Attachment includes a document titled "Note Addendum." It has a signature for what appears to be the Debtor and the date September 25, 2006 at the bottom. This Addendum lists terms for an NSF fee and collection costs if

payment is not made, a late charge, prepayment penalty, and compounding of interest.

Conclusion

The proposed Chapter 13 Plan presents significant challenges not only for creditors, but the Debtor herself and the court. Here, while some provision is made for the Creditor's claim, it is an interest only payment for an indeterminate amount of time. The "plan" makes not provision to repay the claim, but merely states that at some future date whatever debt is determined to be owed will be paid - somehow from the sale or refinance of the property.

The plan does require payment in full to be made to the creditor holding the senior lien on the collateral, which provides some protection to the objecting Creditors. Corresponding, by paying the creditor holding the senior lien Debtor gets to continue to reside in the house and generate some rental income.

Even without providing for other than a monthly payment of $800.00 to the objecting Creditors, the viability of a "restructure" through Chapter 13 has not been shown. It appears that Debtor has unrealistic expenses stated on Schedule J, which may be "numbers filled in" solely for the purpose of generating a bottom line pre-determined projected disposable income figure.

Rather than a "restructure," this plan appears to be taking the place of a preliminary injunction issued in the Adversary Proceeding, or a District Court or Superior Court action. If in federal court, Federal Rule of Civil Procedure 65 and Federal Rule of Bankruptcy Procedure 7065 require the posting of a bond, as determined necessary by the trial court. When this court has allowed the automatic stay to be used in lieu of a bond for litigation (whether in the Bankruptcy Court, District Court, or Superior Court), the debtor has been required to make a significant adequate protection payment to create a self funding bond which is held by the Clerk of the Court or paid to the Creditors to reduce the undisputed amount of the debt.

Here, the Debtor has not shown an ability to so self-fund a bond as part of a bankruptcy plan (and does not so propose). Rather, it appears that the fight is really outside of a bankruptcy plan, with the trial judge determining the amount of a bond, if any, to support a preliminary injunction on the facts stated for the various causes of action in the complaint. For federal court, see *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) for sufficient pleading for federal court complaints.

Debtor has not presented to the court a plan which the court can determine is feasible. The Plan does not comply with the requirements of 11 U.S.C. §§ 1322 and 1325 to adequately provide for objecting Creditors' secured claim.

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.

21. 10-40469-E-13 BRETT ROBINSON ORDER TO APPEAR AND SHOW CAUSE
RHS-1 Marc Caraska 11-13-15 [136]

DEBTOR DISMISSED: 06/29/2015

Final Ruling: No appearance at the December 15, 2015 hearing is required.

Local Rule 9014-1(f)(3) 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, and Office of the United States Trustee on November 18, 2015. By the court's calculation, 27 days' notice was provided.

The Order to Appear and Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Order to Appear and Show Cause is discharged and the case is closed.

On November 13, 2015, the court issued an Order to Appear and Show Cause in the instant bankruptcy case. Dckt. 136. The court ordered the following:

> **IT IS ORDERED** that Brett Lane Robinson, debtor in the above-captioned case, and Marc A. Caraska, attorney for the Debtor, shall appear on December 15, 2015, at 3:00 p.m. in Department E of the United States Bankruptcy Court, 501 I Street, Sixth Floor, Sacramento, California, to show cause as to why the court does not enter an order re-closing the case, the Debtor not attempting to address the default, complete a plan, and obtain a discharge in this case which has been pending for almost five years.
>
> **IT IS FURTHER ORDERED** that Brett Lane Robinson and Marc A. Caraska, and each of them, shall appear at the hearing in person, and no telephonic appearance is authorized for the hearing for this Order to Show Cause.
>
> **IT IS FURTHER ORDERED** that written responses to this Order to Show Cause shall be filed and served on the Chapter 13 Trustee and U.S. Trustee on or before December 4, 2015.

Dckt. 136.

The Debtor had filed a Motion to Reopen Case to Permit Debtor to Complete Chapter 13 Plan on September 21, 2015. Dckt. 122. The Debtor sought to have the case reopened after it was dismissed on June 29, 2015 due to the Debtor's delinquency. Dckt. 112. The court granted the Debtor's Motion to Reopen Case and ordered that the Debtor file a Motion to Vacate the Dismissal on or before October 20, 2015. Dckt. 135.

No such Motion has been filed to date. The court issued the instant Order to Appear and Show Cause in response to the Debtor's failure to file a Motion to Vacate.

DEBTOR'S RESPONSE

The Debtor filed a response on December 8, 2015. Dckt. 141. The Debtor states that following the hearing on the Motion to Reopen, the Debtor determined it was not in his best interest to proceed with the Motion to Vacate due to the costs involved with the motion, the reimbursement of the Trustee's expenses, the short time frame given, and the Debtor's inability to gather which might meet the requirements as laid out in the court's civil minutes.

The Debtor asserts that the Debtor assumed, based on the court's order language, that if the Debtor failed to file the Motion to Vacate on or before October 20, 2015, it would result in the automatic dismissal of the reopened case. It was not until the instant Order that the Debtor realized his error.

DISCUSSION

Here, the Debtor states that the reason for the failure to file a Motion to Vacate by the deadline set by the court was a conscious decision. The Debtor, after filing the Motion to Reopen, having hearing on the Motion, and learning of the potential costs involved with vacating the dismissal, decided it was not in the Debtor's best interest.

The court in the civil minutes on the Motion to Reopen highlighted the fact that the Debtor's Motion to Reopen failed to properly state with particularity the grounds for reopening the case, failed to respond to the Trustee's Motion to Dismiss, and the substantial amount in delinquency the Debtor is currently under the confirmed plan. Dckt. 133.

The Debtor's explanation reflects the court's and Trustee's initial understanding of the Debtor's failure to respond to the Motion to Dismiss. Namely, that because the Debtor did not oppose the Motion to Dismiss, it "indicat[ed] to the court, the Trustee, and parties in interest that [the Debtor] was 'folding his tent' and moving on outside of bankruptcy." Dckt. 133.

The Debtor's response sufficiently responds to the court's Order. Therefore, for cause, the court discharges the Order to Appear and Show Cause and the case is closed. The Debtor and Debtor's counsel do not have to appear at the hearing.

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 Order to Appear and Show Cause issued by the court 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 Order is discharged and the case is closed. No appearances necessary.

22. 14-23669-E-13 DAVID/JESSICA CERVANTES MOTION TO MODIFY PLAN
DPR-3 David Ritzinger 10-28-15 [58]

Final Ruling: No appearance at the December 15,2015 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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2015. By the court's calculation, 48 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 October 28, 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.

23. 15-28272-E-13 MARAH TORRES
TJW-1 Timothy Walsh

MOTION TO VALUE COLLATERAL OF PNC BANK N.A.
12-1-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, parties requesting special notice, and Office of the United States Trustee on December 1, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of PNC Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Marah Torres ("Debtor") to value the secured claim of PNC Bank N.A. FN.1. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 140 Reynard Lane, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $435,000.00 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).

Debtor's motion claims the original creditor for the second deed of trust was National City Bank, which was "absorbed by PNC Bank N.A. in 2009. The account was taken over by PNC Bank N.A. The PNC Bank N.A. account # is xxxx-xxxx-xxxx-9410." Dckt. 18 ¶ 1; Dckt. 21 Exhs. A, B. Despite these claims, Debtor did not provide proof of an assignment of interest from National City Bank to PNC Bank N.A. A review of the court's docket shows that no proof of claim was filed by PNC Bank N.A. or National City Bank. Debtor's filed Schedule D does show a secured claim by National City Bank c/o National Home Equity Locator 7180 for $435,000.00. Dckt. 1 Schedule D.

However, the Debtor has provided a copy of the "charge-off" letter from the Creditor. Dckt. 21, Exhibit A. While the court cannot find evidence of National City Bank being absorbed by PNC Bank N.A., the charge-off letter as well as other information indicating such, the Debtor has provided sufficient evidence from the pleadings for the instant Motion that PNC Bank, N.A. is the actual creditor.

The senior in priority first deed of trust secures a claim with a balance of approximately $538,854.00. Creditor's second deed of trust secures a claim with a balance of approximately $160,926.00. 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 Marah Torres ("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 PNC Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 140 Reynard Lane, 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 $435,000.00 and is encumbered by senior liens securing claims in the amount of $538,854.00, which exceed the value of the Property which is subject to Creditor's lien.

24. 15-27773-E-13 KATE KERNER
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-17-15 [23]

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, Debtor's Attorney on November 17, 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. At the hearing ----------.

The court's decision is to sustain the Objection.

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

1. The Debtor cannot make the plan payments. The Debtor admitted at the Meeting of Creditors that her business KKK Strategies LLC has not been paying quarterly taxes, and this may be reflected on Schedule J. The business appears to be owned solely by the Debtor and valued at $1,300.00 only employed the Debtor for the last 1.6 years, and based on the California Secretary of State website was formed on May 1, 2014.

2. The Debtor's plan is not her best efforts. The Debtor is over the median income and proposes plan payments of $2,200.00 for 14 months, then $2,500.00 for 46 months with a 0% dividend to unsecured creditors.

The Debtor's Form 22C2 reflects disposable income of $1,847.94 for 60 months, which totals $110,876.40 and the Debtor is proposing to pay unsecured creditors $0.00. The Form also reflects $4,266.49 from "draws from LLC" which does not establish the net profit from the LLC. Additionally, the Debtor has failed to project the net profit of the LLC which is owned entirely by the Debtor and her net profit, less any amount that should be reasonably retained by the LLC.

The Debtor's bank statements also show higher gross income for the LLC, and appears likely to include personal expenses. The Debtor only indicated one bank account on Schedule B and the bank account reflects an average income of $5,909.33 which is $1,642.84 more than the projected LLC draw.

The Debtor has provided the Trustee with 6 months of estimated Profit and Loss Statements for the same period and they reflect an average gross receipts of $5,535.00 and an average monthly expenses of $1,035.82, leaving an ability to draw only $4,319.19.

DEBTOR'S REPLY

The Debtor filed a reply on November 30, 2015. Dckt. 30. The Debtor states that the Debtor's plan is feasible. The Debtor has amended Schedule J and eliminated her "recreation" expense. The Debtor will use these funds to pay her quarterly taxes in the amount of $4,100.00 per month.

The Debtor also states that she has amended her Form 22C-2 by taking advantage of deductions not previously utilized. The Debtor states that the result is disposable income of -$275.41.

Lastly the Debtor states that she has no opposition to submitting yearly returns for both the Debtor and the LLC to ensure financial compliance. The Debtor states that since her income is affected by the California election cycle, it is difficult to project income and expenses. The Debtor proposes that the she will submit yearly tax returns for both the Debtor and her LLC to the Trustee for monitoring.

TRUSTEE'S RESPONSE

The Trustee filed a response on December 2, 2015. Dckt. 32. The Trustee states that he agrees that the Debtor should provide her personal income tax returns, corporate income tax returns, and proof of her quarterly income tax returns to the Trustee. The Trustee also argues that the Debtor should also provide any refunds received each year to the Trustee for payment to creditors based upon the best effort objection.

The Trustee notes that he has reviewed the Debtor's amended Form 22C-2 and Schedule J. The Trustee argues that the actual calculation for disposable

income should be $1,101.54 for 60 months, which totals $66,092.00 to be paid to unsecured. The Trustee argues that Line 16 of the Form was changed to reflect taxes in the amount of $1,030.35 without any explanation or proof of taxes. The Debtor's 2014 income tax return the Debtor paid $9,811.00 in taxes that year. Based on that amount paid, the Trustee believes the proper deduction for taxes should be $818.50.

Additionally, the Trustee argues that the Debtor changed line 17 to $1,165.45 without any explanation or proof of involuntary deductions. The Trustee believes this should be $0.00.

The Trustee argues that the Debtor may have more income to be paid into the Plan. The Trustee states that if the Debtor provides copies of personal and corporate tax returns each year, as well as proposing to pay in any tax refunds received into the plan for the benefit of creditors, the Trustee would agree that this objection is resolved.

DISCUSSION

The Trustee's objections are well-taken. The Debtor's financials seem to not accurately reflect the proposed plan. The Debtor has filed amended Form 22C-2 and Schedule J to further show that the instant Plan was filed as the Debtor's best efforts. However, as highlighted by the Trustee, the Debtor does not provide any explanation or justification for the various edits to the forms. The Debtor merely states in her response that she is now claiming deductions and exemption previously overlooked but does not provide the justification for such. The same is true with the Schedule J. The Debtor completely eliminated an expense for the purpose of paying quarterly taxes. However, this just seems like a "number playing game" to justify the proposed plan. The Trustee is amicable to the Debtor's plan if the Debtor provides yearly copy of the Debtor's taxes and pays any tax refunds received into the plan. The Debtor has not agreed to such treatment to date.

Even if the Debtor was to agree to turn over any tax refunds received, the plan appears to be based on financial facts that are not true, as evidenced by the Debtor filing amended Schedule J and Form 22c-2. The court will not confirm a plan when the court is uncertain if the finances in which they are based are not accurate.

Therefore, 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.

25. 13-31975-E-13 JACK/LINDA GANAS CONTINUED MOTION TO MODIFY PLAN
PLC-4 Peter 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.

OCTOBER 27, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on December 15, 2015 to permit time for a Motion to Approve Loan Modification to be filed and set. Dckt. 91.

DISCUSSION

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

To date, the Debtor has failed to file a response to the instant Motion and has failed to file a Motion to Approve Loan Modification.

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.

26. 15-27379-E-13 MARCELLO FREIRE **MOTION TO CONFIRM PLAN**
MMM-1 Mohammad Mokarram **11-2-15 [16]**

Final Ruling: No appearance at the December 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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 November 2, 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. 15-22182-E-13 RUTH CLARK — MOTION TO CONFIRM PLAN
PGM-2 Peter Macaluso — 10-30-15 [110]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 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.

Ruth Clark ("Debtor") filed the instant Motion to Confirm the Amended Plan on October 30, 2015. Dckt. 110.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on December 1, 2015. Dckt. 121. The Trustee objects on the ground that the Debtor may not be able to make the plan payments. The Debtor's plan calls for total payments through October 2015 of $2,216.96, then $1,560.00 per month starting November 2015. Debtor's first amended plan called for payments of $1,100.00 per month. Debtors most recent Schedule J shows net income of $1,100.00 per month. The Trustee is not aware of any subsequent amended Schedule J to date. The Debtor has not shown the ability to make the increased plan payments. The Debtor is current at this time.

DEBTOR'S REPLY

The Debtor filed a reply on December 7, 2015. Dckt. 124. The Debtor states that the Debtor is still hospitalized and as such the payments have been supported by the evidenced significant other's contribution, which has not changed. Debtor's significant other is aware of the increase in the plan payments and is helping Debtor make the increased amount due.

DISCUSSION

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

The Trustee's objection is well-taken. While the Debtor's response states that her significant other is supplementing her income for the plan payments, the Debtor failed to provide any declaration, signed under the penalty of perjury, that this undisclosed significant other would be willing to pay the difference in the step up plan payments. The evidence provided by the Debtor shows that the Debtor has a disposable income of $1,100.00.

The Debtor filed a declaration from Tom Carey, who is identified as "friend of Debtor," in support of the Debtor's initially filed plan. Dckt. 68. While not filed in connection with the instant Motion, Mr. Carey states that he will contribute up to "$400.00 per month." Assuming, argendo, that Mr. Carey still is willing to contribute that much, the Debtor would still be short $60.00 a month under the proposed plan - $1,100.00 from the Debtor and $400.00 from Mr. Carey equals $1,500.00. The plan calls for $1,560.00.

Taken together, this suggests the plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

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

The court shall 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.

28. 15-24984-E-13 MARIE GARY
EWV-71 Eric Vandermey
MOTION TO VALUE COLLATERAL OF HOMECOMING FINANCIAL
11-3-15 [25]

Final Ruling: No appearance at the December 15, 2015 hearing is required.

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Homecoming Financial c/o Ocwen Mortgage Servicing, Inc. serviced by Green Tree Financial, LLC. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Marie Gary ("Debtor") to value the secured claim of Homecoming Financial c/o Ocwen Mortgage Servicing, Inc., serviced by Green Tree Financial, LLC FN.1, ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 603 Woodlark Dr., Suisun City, California ("Property"). Debtor seeks to value the Property at a fair market value of $282,058.00 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).

FN.1. The court notes that Debtor claims Green Tree Financial, LLC services the loan for Synchrony Bank. A review of the court's docket shows that Debtor

listed "Green Tree Servicing" as the creditor for the second and third mortgages on Schedule D. Dckt. 1 Schedule D.

While a search on the California Secretary of State's website shows that Green Tree Financial, LLC is still active, an internet search shows that Green Tree Financial, LLC became DiTech Financial, LLC on August 31, 2015. The court only makes this distinction for the purposes of clarity. In addition, this error is minor because Debtor listed the creditor, Homecoming Financial, in the motion. Because the error is inconsequential for the instant matter, it is waived.

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.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition on December 1, 2015. Dckt. 42. Trustee points out that Green Tree Financial, LLC, did not file a proof of claim.

DISCUSSION

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured

claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--
>
> > (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
> >
> > **(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.**

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not stip the lien. Even reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court value the creditor's secured claim pursuant to § 506(a) is not supported by the Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

> (a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R.

Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee's suggestion that a proof of claim is necessary for the debtor to value a secured claim would lead to a very troubling dysfunction in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor's secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee's premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page "opposition" of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee's opposition is overruled.

On the merits of the motion, the first deed of trust secures a claim with a balance of approximately $351,444.00. Creditor's second deed of trust secures a claim with a balance of approximately $37,469.00. 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 Marie Gary ("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 Homecoming Financial c/o Ocwen Mortgage Servicing, Inc., serviced by Green Tree Financial LLC, is secured by a second deed of trust recorded against the real property commonly known as 603 Woodlark Dr., Suisun City, 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 $282,058.00 and is encumbered by senior liens securing claims in the amount of $351,444.00, which exceed the value of the Property which is

subject to Creditor's lien.

29.	**15-24984-E-13** **EWV-72**	**MARIE GARY** **Eric Vandermey**	**MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK** **11-3-15 [29]**

Final Ruling: No appearance at the December 15, 2015 hearing is required.

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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Synchrony Bank, serviced by Green Tree Financial, LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Marie Gary ("Debtor") to value the secured claim of Synchrony Bank, serviced by Green Tree Financial, LLC FN.1, ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 603 Woodlark Dr., Suisun City, California ("Property"). Debtor seeks to value the Property at a fair market value of $282,058.00 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).

FN.1. The court notes that Debtor claims Green Tree Financial, LLC services the loan for Synchrony Bank. A review of the court's docket shows that Debtor listed "Green Tree Servicing" as the creditor for the second and third mortgages on Schedule D. Dckt. 1 Schedule D.

While a search on the California Secretary of State's website shows that Green Tree Financial, LLC is still active, an internet search shows that

Green Tree Financial, LLC became DiTech Financial, LLC on August 31, 2015. The court only makes this distinction for the purposes of clarity. In addition, this error is minor because Debtor listed the creditor, Synchrony Bank, in the motion. Because the error is inconsequential for the instant matter, it is waived.

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.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition on December 1, 2015. Dckt. 45. Trustee points out that Green Tree Financial, LLC, did not file a secured claim.

DISCUSSION

As to Trustee's objection, the court is not persuaded that a proof of claim is necessary in order for the court to value the secured claim of a debtor. First, the Trustee's "opposition" does not provide any argument or legal authorities (other than referencing the Bankruptcy Code proof of claim sections) as to why the mere fact a secured claim does not have a proof of claim why a Motion to Value is inappropriate.

A creditor is not required to file a proof of claim for a secured claim. Rather, the Debtor has to address the secured claim, or continue to have the collateral saddled by the lien. As the Supreme Court has found, a lien continues through the bankruptcy case unaffected, subject to the ability of a debtor to modify the rights of the holder of the lien under the provisions of the Bankruptcy Code. *Dewsnup v. Timm*, 502 U.S. 410 (1992).

The mere failure to file a proof of claim not affecting the lien rights and the creditor having a "secured claim, is recognized in 11 U.S.C. § 506(d):

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--
>
> > (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or
> >
> > **(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.**

Therefore, § 506(d) allows for liens to pass through the bankruptcy case unaffected. The lien being unaffected by the bankruptcy case itself, therefore, means that the discharge injunction does not stip the lien. Even reviewing the plain language of § 506(d), the Code expressly states that a secured claim is not void "due only to the failure of any entity to file a proof of such claim under section 501 of this title."

Applying these foundations to the Trustee's argument, the assertion that a proof of claim is necessary for the court value the creditor's secured claim pursuant to § 506(a) is not supported by the Bankruptcy Code.

Looking outside of § 506, Fed. R. Bankr. P. 3002 outlines the rules for filing a proof of claim or interest. Pursuant to Fed. R. Bankr. P. 3002(a):

> (a) Necessity for Filing: Unsecured creditor or an equity security holder must file a proof of claim or interest for the claim or interest to be allowed. . . .

The canon of construction *expressio unius est exclusio alterius*, when one or more things of a certain classification are expressly mentioned, others of the same classification is excluded, applies directly to the instant objection. Here, the rules promulgated explicitly require that an unsecured creditor must file a proof of claim in order for their unsecured claim to be deemed allowed. Fed. R. Bankr. P. 3002 excludes secured claims from such requirements. As such, and under the canon, the failure of an entity to file a proof of claim for a secured claim does not deem it disallowed.

While the court is cognizant of the literal reading advanced by the Trustee, the substantial case law and legislative history surrounding § 506 valuations support the conclusion that a proof of claim is not necessary for a § 506(a) motion. This is further emphasized by Fed. R. Bankr. P. 3004 and 3006. While Fed. R. Bankr. P. 3003(c)(3) provides for an exclusive period within which a creditor may file a proof of claim, Fed. R. Bankr. P. 3004 allows for a trustee or debtor to file a proof of claim on behalf of a creditor if that creditor fails to timely file a proof of claim. In comparison, Fed. R. Bankr. P. 3006 deals with the withdrawal of claims. Specifically, the Rule permits a creditor, as a matter of right, to withdraw a claim prior to any objection being filed. The Rule, however, does not extend that same right to a trustee or debtor.

The Trustee's suggestion that a proof of claim is necessary for the

debtor to value a secured claim would lead to a very troubling dysfunction in the Bankruptcy Code. A creditor, as the only entity who has the authority to withdraw claims, could preclude a debtor confirming a plan and having the creditor's secured claim properly valued by withdrawing any proof of claim filed by the Debtor or trustee pursuant to Fed. R. Bankr. P. 3006.

Additionally, the Trustee's premise would also mean that the bankruptcy trustees in this District would have been improperly been disbursing funds to any creditor with a secured claim provided for in a plan which did not file a proof of claim, regardless of whether its claim was valued under § 506(a) or not. The two page "opposition" of the Trustee implicates a larger issue than just whether the Debtor could file a Motion to Value without a proof of claim. This is clearly not the contemplated nor actual outcome intended by Congress.

Therefore, the Trustee's opposition is overruled.

On the merits of the motion, the first and second deeds of trust secure claims with a balance of approximately $388,888.00. Creditor's third deed of trust secures a claim with a balance of approximately $93,518.00. 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 Marie Gary ("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 Synchrony Bank, serviced by Green Tree Financial, LLC, is secured by a third mortgage recorded against the real property commonly known as 603 Woodlark Dr., Suisun City, 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 $282,058.00 and is encumbered by senior liens securing claims in the amount of $388,888.00, which exceed the value of the Property which is subject to Creditor's lien.

30. 15-24984-E-13 MARIE GARY **MOTION TO CONFIRM PLAN**
EWV-73 Eric Vandermey **11-3-15 [33]**

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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.

Marie Gary ("Debtor") filed the instant Motion to Confirm the Amended Plan on November 3, 2015. Dckt. 33.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition on November 13, 2015. Dckt. 39. The Trustee objects on the following grounds:

1. The Debtor's plan relies on the Motions to Value Collateral of GreenTree for the second and third deeds of trusts.

2. The Debtor failed to resolve the Trustee's prior objections:

   a. The Debtor has failed to provide a business income attachment from the Debtor's employment as a Day Care Provider.

b. The Debtor's plan is not her best efforts. The Debtor is under the median income and proposes plan payments of $1,715.00 for 60 months with a 0% dividend to unsecured creditors. The Debtor admitted at the First Meeting of Creditors held on July 23, 2015 that she is receiving an additional $400.00 per month from her Day Care business that is not reflected on Schedule I.

3. The plan fails to provide for the priority claim of the Franchise Tax Board. The Franchise Tax Board filed a priority claim in the amount of $508.81. Proof of Claim No. 5-1.

4. According to the Trustee's calculations, the Plan will complete in 71 months. The Debtor proposes plan payments of $1,715.00 for 60 months which totals $102,900.00. The Debtor proposes to pay a total of $104,403.33, not considering 5.1% Trustee compensation.

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 Trustee's second objection concerns the Debtor's failure to provide a business income attachment as to the Debtor's self-employment as a day care provider. As such, the court nor any other party of interest can accurately determine whether the plan is feasible and viable or whether the Debtor's financial reality is capable of supporting the proposed plan. Therefore, the objection is sustained.

The Trustee further 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 Debtor admitted at the First Meeting of Creditors that there is an additional $400.00 not reported on Schedule I from the debtor's day care business which raises serious concerns over whether the plan is the Debtor's best efforts and whether the Debtor has further disclosed all income. Thus, the court may not approve the plan.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 71 months due to the Debtor attempting to pay more

through the plan than can be given the monthly plan payments. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

Additionally, the plan fails to provide for the priority claim of Franchise Tax Board. A review of the plan shows that the Debtor's plan does not list Franchise Tax Board at all. Pursuant to the Proof of Claim 5-1 filed by Franchise Tax Board, the Debtor owes a priority claim in the amount of $505.81. The plan must provide for the priority claim. 11 U.S.C. § 1322(a)(2). Therefore, the objection is sustained.

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.

31. 15-25788-E-13 CAMILLE GARRETT **MOTION TO CONFIRM PLAN**
FF-2 Brian Turner **11-2-15 [35]**

Final Ruling: No appearance at the December 15, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 2, 2015. By the court's calculation, 43 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 November 2, 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. 15-29089-E-13 JORDAN/HANNAH DONAHUE — MOTION TO VALUE COLLATERAL OF CARFINANCE CAPITAL, LLC
MRL-1 Jeremy Heebner — 11-24-15 [10]

Tentative Ruling: The Motion to Value secured claim 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 November 24, 2015. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Value secured claim of CarFinance Capital, LLC ("Creditor") is granted and the secured claim is determined to have a value of $9,942.00.

The Motion filed by Jordan and Hannah Donahue ("Debtor") to value the secured claim of CarFinance Capital, LLC ("Creditor") is accompanied by

Debtor's declaration. Debtor is the owner of a 2007 Dodge Durago ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $9,942.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in August 31, 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 $16,367.00. 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 $9,942.00. *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 Jordan and Hannah Donahue ("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 [name of creditor] ("Creditor") secured by an asset described as 2007 Dodge Durango ("Vehicle") is determined to be a secured claim in the amount of $9,942.00, 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 $9,942.00 and is encumbered by liens securing claims which exceed the value of the asset.

33. 10-52593-E-13 LEON/SIERRA RENDON
CK-5 Catherine King

MOTION FOR COMPENSATION FOR CATHERINE KING, DEBTORS' ATTORNEY
11-17-15 [148]

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 November 17, 2015. By the court's calculation, 28 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 without prejudice.

Catherine King, the Attorney ("Applicant") for Leon and Sierra Rendon, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period of November 22, 2010, through December 15, 2015. Concurrent with filing the instant case, Applicant and Client filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Dckt. 152 Exh. A. Applicant requests additional fees in the amount of $1,475.00.

"No-Look" Fees

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 152 Exh. A p. 2. Applicant prepared the order confirming the Plan.

If Applicant believes that there has been substantial and unanticipated legal services which have been provided, then such additional fees may be requested as provided in Local Bankruptcy Rule 2016-1(c)(3). He may file a fee application and the court will consider the fees to be awarded pursuant to 11 U.S.C. §§ 329, 330, and 331. In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

It may be that Applicant could, consistent with Local Bankruptcy Rule 2016-1(c)(3), seek the payment of additional fees for "substantial and unanticipated work" outside of what is included in the agreed to set fee. But Counsel must seek such additional fees, not ignore the agreed set fee and Local Bankruptcy Rule 2016-1. In seeking such additional fees, Counsel shall provide the court with the standard lodestar analysis (even if from reconstructed records), and the motion and submitted evidence must make a showing that the work was substantial and unanticipated. The showing of "substantial and unanticipated" should explain why preparing, filing, and serving a necessary motion to sell Debtor's real property is not contemplated in the filed Rights and Responsibilities, which provides that Applicant will "prepare, file, and serve necessary motions to buy, sell, or refinance property when appropriate." Dckt. 152, Exh. A p.2. Finally, Applicant must include a statement as to the benefit of the services to the Debtor and estate.

The court had previously addressed these concerns in the prior civil minutes for the Applicant's Motion for Compensation which was denied on December 4, 2012. Dckt. 118. Specifically, the court stated:

> The court's review of the Rights and Responsibilities indicates that Counsel agreed to receive $4,000 in compensation for providing services that include preparing, filing, and serving "necessary motions to buy, sell, or refinance property when appropriate." (Dckt. 7, Page 2). Counsel has not demonstrating how filing a motion to sell and conducing communications related to the same qualify as "extraordinary" services. Counsel merely states that "[t]he initial agreed-upon fees are not sufficient to fully

> compensate the attorney for the legal services rendered." (Dckt. 107, Page 2). . . .
>
> There are no grounds stated in the Motion and no evidence presented that the additional fees requested are for "substantial and unanticipated post-confirmation work" which was necessary in this case. Rather, the record clearly demonstrates that counsel just ended up spending more time working on this case than the $4,000.00 flat fee she agreed to accept to do the work.
>
> Counsel has not stated grounds nor provided evidence in support of the relief requested.

Id.

The court's prior civil minutes echo the same concerns the court has with the current Motion.

In reading the Motion, the "grounds" stated with "particularity," as required by Federal Rule of Bankruptcy Procedure 9013, can be summarized as, "counsel says that additional work was done, counsel computes the additional fees to be, and based on counsel so concluding, the additional fees are to be paid." From the Motion the court has no idea what grounds are stated for: (1) what additional work was done, (2) why such additional work was necessary, (3) how such additional work was substantial, (4) why such additional work was unanticipated. Rather than complying with the requirements of the Local Rule when counsel elects to take the No-Look Fee, it appears that this is just being treated as a lump sum payment, but counsel gets more if she decides the lump sum payment was sufficient. That is not how the election to accept No-Look Fees in a Chapter 13 case works. FN.1.

FN.1. The court notes that the "grounds" which must be stated with particularity may be spread around in declarations filed in support of the Motion. The court clearly, fairly, and equally applies the pleadings rules, never leaving it to any counsel to guess when the rules apply and when the court ignores them. Such grounds must be stated in the Motion itself, and then supported by evidence if necessary. While stating that what could be grounds may be sprinkled in other pleadings, the court is not saying that there are grounds upon which the court could conclude that there was both substantial and unanticipated legal services required.

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Catherine King ("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 without prejudice.

34. 11-48095-E-13 MICHAEL NEUMANN — **CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE**
LDD-5 Linda Deos — **10-16-15 [107]**

Tentative Ruling: The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 3007-1 Objection to Notice of Mortgage Payment Change.

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 October 16, 2015. By the court's calculation, 60 days' notice was provided. 30 days' notice for asserting opposition is required. (Fed. R. Bankr. P. 3007(a) 30 day notice.)

The Objection to Notice of Mortgage Payment Change was properly set for hearing on the notice required by Local Bankruptcy Rule 3007(d)(2). Creditor, Debtor, 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 hearing on the Objection to Notice of Mortgage Payment Change filed by Federal National Mortgage Association is continued to 3:00 p.m. on January 12, 2016.

STIPULATION TO CONTINUE HEARING

On December 11, 2015, Fannie Mae; Loan Servicer Seterus, Inc.; and the Debtor filed a Stipulation for this hearing to be continued. Dckt. 118. The stated reason for the continuance is to allow the new loan servicers, the attorneys for the new loan servicer, the creditor, and the Debtor to focus on working out a settlement and not be distracted by having to file other pleadings at this time. The court respects the request of the parties and believes that each is sincere in representing to the court that there is ongoing, constructive, productive settlement efforts.

The court has addressed significant problems relating to the conduct of the prior loan servicer and that servicer's counsel. Order to Show Cause, DCN: RHS-1; Civil Minutes, Dckt. 115. The court ordered that the Order to Show Cause was discharge, without further sanctions. Dckt. 116. The prior loan servicer and counsel for that servicer, and multiple representatives of each and other counsel, have made multiple appearances in response to several orders to show cause concerning their business practices, lack of identification of the actual creditor, and documents being presented as evidence. From subsequent conduct, that loan servicer appears to acting to correct these significant deficiencies.

The court has issued an order continuing the hearing as requested by the parties.

REVIEW OF MOTION AND PRIOR PROCEEDINGS

Michael Neumann ("Debtor") filed the instant Objection to Federal National Mortgage Association's Notice of Mortgage Payment Change, Proof of Claim No. 1-2 on October 16, 2015. Dckt. 107. The Debtor seeks for the court to deny Federal National Mortgage Association's ("Creditor") Notice of Mortgage Payment Change filed on October 9, 2015 and for the award of attorney fees and expenses in the amount of $900.00.

STIPULATION

On October 29, 2015, the parties filed a stipulation requesting that the Objection be continued to 3:00 p.m. on December 15, 2015 to allow the parties the chance to settle.

ORDER

On October 29, 2015, the court issued an order continuing the Objection to 3:00 p.m. on December 15, 2015. Dckt. 114. The court further ordered that Federal National Mortgage Association's deadline to file a responsive pleading is extended to December 1, 2015.

MOTION

The Debtor states that Ocwen Loan Servicing, LLC filed a Notice of Mortgage Payment Change on February 18,, 2013 which lowered Debtor's escrow payment from $361.78 to $329.36. Debtor did not dispute this change nor was there any mention of an escrow shortage of $4,280.95.

The Debtor states that Ocwen Loan Servicing, LLC filed another Notice of Mortgage Payment Change on February 28, 2014 which lowered the Debtor's escrow payment from $329.36 to $265.84. Once again, the Debtor states that he did not dispute the change nor was there any mention of any escrow shortage.

Ocwen Loan Servicing, LLC filed another Notice of Mortgage Payment Change on April 24, 2015 which proposes to increase the Debtor's escrow payment from $265.84 to $569.31. The Debtor states that Ocwen Loan Servicing, LLC alleges the increase is necessary because of the cost of force placed hazard insurance ($739.00 and a Proof of Claim Escrow Shortage Adjustment of $4,280.95.

The Debtor objected to the adjustment based on the following:

1. The Proof of Claim Escrow Shortage Adjustment of $4,280.95 identified by Ocwen Loan Servicing, LLC in its Notice is already being paid by Debtor through his Chapter 13 plan and the Proof of Claim filed by the predecessor in interest, GMAC. In the Proof of Claim No. 1, GMAC claimed $4,473.33 in pre-petition fees, expenses, and charges.

2. Debtor already paid Ocwen Loan Servicing, LLC to cover an escrow shortage.

3. Debtor has obtained hazard insurance from USAA for $364.00 effective July 1, 2015.

On August 13, 2015, the court sustained the Debtor's objection and disallowed the stated changes in the requested escrow payments in the April 24, 2015 Notice of Mortgage Payment Change. Dckt. 84.

On August 31, 2015, Creditor filed a Notice of Transfer of Claim from Ocwen Loan Servicing, LLC to itself. Dckt. 89. The claim was actually transferred on October 6, 2015. Dckt. 106.

On October 9, 2015, the Creditor file a Notice of Mortgage Payment Change which proposed an increase in Debtor's escrow payment from $265.84 to $270.40. Creditor argues that the increase is necessary because of the cost of force placed hazard insurance in the amount of $402.47 and a Post Petition Escrow Shortage Adjustment of $160.99. The Debtor argues that there is no explanation given for the increase in Debtor's principal and interest payment nor is there any evidence submitted to justify such increase.

The Debtor objects to the adjustment based on the following:

1. The Proof of Claim Escrow Shortage Adjustment of $4,280.95 identified by Ocwen Loan Servicing, LLC in its Notice is already being paid by Debtor through his Chapter 13 plan and the Proof of Claim filed by the predecessor in interest, GMAC. In the Proof of Claim No. 1, GMAC claimed $4,473.33 in pre-petition fees, expenses, and charges.

2. Debtor already paid Ocwen Loan Servicing, LLC to cover an escrow shortage.

3. Debtor has obtained hazard insurance from USAA for $364.00 effective July 1, 2015.

APPLICABLE LAW

Fed. R. Bankr. P. 3002.1 deals with "Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence." The Rule provides for the following, in relevant part:

> (b) Notice of payment changes
>
> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due.
>
> (c) Notice of fees, expenses, and charges
>
> The holder of the claim shall file and serve on the debtor, debtor's counsel, and the trustee a notice itemizing all fees, expenses, or charges (1) that were incurred in connection with the claim after the bankruptcy case was filed, and (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence. The notice shall be served within 180 days after the date on which the fees, expenses, or charges are incurred. . . .
>
> (I) Failure to notify
>
> If the holder of a claim fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:
>
> > (1) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
> >
> > (2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

NOTICE OF MORTGAGE PAYMENT CHANGE

The court has reviewed the Notice of Mortgage Payment Change filed on October 9, 2015, filed by Creditor. The information in the Notice is summarized as follows:

1. Current Payment:

a. Principal and Interest = $644.94
b. Escrow = $265.84

c. Total = $910.78

2. New Payment Effective 11/1/15

a. Principal and Interest = $749.28
b. Escrow = $267.72
c. Shortage Spread = $2.68
d. Total = $1,019.68

3. The Notice includes a history of this escrow as follows

Month	Projected Payments to Escrow	Projected Payments from Escrow	Description	Projected Ending Balance
Beginning Balance				$-96.11
Post Petition Beginning Balance				$1,846.03
November 2015	$267.72	$1,405.09	County Tax	$708.66
December 2015	$267.72			$976.38
January 2016	$267.72			$1,244.10
February 2016	$267.72			$1,511.82
March 2016	$267.72	$1,405.09	Count Tax	$374.45
April 2016	$267.72			$642.17
May 2016	$267.72			$909.89
June 2016	$267.72			$1,177.61
July 2016	$267.72	$402.47	Hazard Insurance	$1,042.86
August 2016	$267.72			$1,310.58
September 2016	$267.72			$1,578.30
October 2016	$267.72			$1,846.02
TOTALS	$3,212.64	$3,212.65		

4. The Notice states that the projected beginning balance of the escrow account is $1,846.03. The Notice further states that the minimum required balance of the escrow account is $2,007.02. This means a “post-petition shortage and/or deficiency of $160.99.” The Notice states that Creditor has spread out the shortage over the next 60 installments and included the amount in the escrow payment.

DISCUSSION

The confirmed plan provides for the payment to "GMAC Mortgage" in Class 1, with a monthly dividend of $65.95 payment in month 7, $330.85 for months 8-55, and $53.25 for month 56.

The Notice of Mortgage Payment Change filed by Ocwen Loan Servicing, LLC on April 24, 2015 states that there a "post-petition shortage and/or deficiency of $160.99." The Notice states that Creditor has spread out the shortage over the next 60 installments and included the amount in the escrow payment, which resulted in a change of escrow from $265.84 to $270.40 (267.72 in escrow and $2.68 in escrow shortage spread).

The attached statement to the Notice also indicates that the Principal and Interest have been increased from $644.94 to $749.28. The Creditor does not provide any information as to why the principal and interest have increased. The only information provided for this increase is:

> The principal and interest payments reflect the contractual amount due under the note, which can be modified with a mutually agreed upon payment plan. In addition, the new principal and interest payment and the total new payment may not reflect any changes due to interest rate adjustments. You will receive a separate notice for interest rate adjustments.
>
> No further information or justification is provided by the Creditor.

At this point, the Debtor asserts that all of the payments required under the Chapter 13 Plan for both the current monthly payment and the pre-petition arrearage have been made to the Trustee. The court sustains the Objection and finds that Creditor have not provided evidence that a basis exists for increasing the monthly payment.

It is troubling that Creditor, following the court sustaining the Debtor's prior objection to the Notice of Mortgage Payment Change, did not provide for sufficient explanation and justification for the increase. This is especially troubling given the fact that the court had to order Ocwen Loan Servicing, LLC into court in order to provide evidence as to who the actual holder of the note is.

ATTORNEYS' FEES

In the Objection to Notice of Mortgage Payment Change Debtor requests the award of $900.00 in legal fees to it as the prevailing party. The Objection directs the court to Federal Rule of Bankruptcy Procedure 3002.1, which provides for an award of attorneys' fees for the Debtor when the person asserting the mortgage payment change fails (1) to provide the information required in the notice of mortgage payment change, (2) to provide the information supporting a notice of post-petition fees, charges, and costs, or (3) filing a response to a notice of final cure payment. Fed. R. Bankr. P. 3002.1(I).

As addressed above, Creditor has failed to provide in the Notice of Mortgage Payment Change information upon which the court can determine such an

increase is proper.

The court also notes that previously in this case GMAC Mortgage, LLC has stated that it was entitled to post-petition attorneys' fees on the claim for which the current Notice of Mortgage Payment Change has been filed by Ocwen Loan Servicing, LLC, and its creditor client or principal. See Notice of Post-petition Mortgage Fees, Expenses, and Charges filed on April 9, 2012, asserting the right to $425.00 in post-petition attorneys' fees. Attached to the Proof of Claim No. 1 filed by GMAC Mortgage, Inc. are copies of the Promissory Note and Deed of Trust upon which the Ocwen Loan Servicing, LLC demand for an increased post-petition mortgage payment is based. Paragraph 22 of the Deed of Trust provides, "If the default [breach of any covenant or agreement in the Deed of Trust] is not cured. . . Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to reasonable attorneys' fees and costs of title evidence." The Note in Paragraph 6.(E) provides that in the event of a default in payments, the borrower is obligated to pay the Note holder costs and expenses, including reasonable attorneys' fees.

California Code of Civil Procedure § 1717(a) provides that for any action on a contract in which the contract provides for attorneys' fees and costs to be awarded to one of the parties if they prevail, then the other party shall also be entitled to enforce that provision (even though not named) if such other party is the prevailing party. In this case, through the Notice of [Post-Petition] Mortgage Payment Change Ocwen Loan Servicing, LLC, asserted defaults in the Note and Deed of Trust, asserting that required monetary amounts were not paid.

The court determines that Creditor have not show a grounds for increasing the monthly payment of principal, interest, impounds, escrow, or any other amounts for any reason which existed prior to August 1, 2015. The court sustains the objection and disallows the asserted increases in the payments due from Debtor on the note in their entirety.

Prevailing Party Attorneys' Fees

With the 2014 amendment of Federal Rule of Bankruptcy Procedure 7008(b), prevailing party attorneys' fees and costs are generally addressed by post-judgment/order motions in adversary proceedings and contested matters. Fed. R. Bankr. P. 7008(b) and 9014. No longer are parties in adversary proceedings and contested matters required to actually state the grounds upon which the requested attorneys' fees are based as a "claim" in the complaint/motion. Here, the court could sustain the Objection and order the prevailing Debtor to file a motion for attorneys' fees and costs.

In the Objection attorneys' fees of $900.00 are requested. Debtor does not provide any time sheets or billing statements to support the request for attorneys' fees. No declaration is provided by counsel for Debtor attesting to the billings upon which the fees are based. Rather, Debtor's request, as stated in the Objection, appears to be akin to a flat fee request, just as creditor's attorneys commonly seek for providing legal services in preparing proofs of claim or filing motions for relief from the automatic stay.

It the court were to require a post-judgment/order motion for attorneys fees, it is likely that such fees would balloon to three or four times the

$900.00 requested in the Objection. The default of Creditor having been entered, the court may consider the relief requested in the motion. Fed. R. Civ. 55, Fed. R. Bankr. P. 7055 and 9014. The court, if proceeding by default and without further hearing, may not grant greater relief beyond what is requested on the face of the complaint/motion.

In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The 'lodestar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

Here, if computed on a loadstar basis, at $300 an hour, $750 in fees equates to 2.5 hours. At a discounted $250 an hour rate, it would be 3.0 hours. Even at three hours, the amount of time for Debtor's counsel to review the Notice, communicate with the Debtor, draft the Objection, and attend the hearing would not be unreasonable. The $750.00 amount is consistent with what the court sees presented as fix fee amounts for creditors filing "simple" motions.

35. 15-27797-E-13 DOLORES/SIDNEY FOGAL
DPC-2 Peter Macaluso
OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
11-12-15 [18]

Final Ruling: No appearance at the December 15, 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 and Debtor's Attorney on November 12, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The objection to claimed exemptions is sustained and the claimed exemptions under California Code of Civil Procedure § 703.140(b)(5) are disallowed in any amount in excess of $26,425.00.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Exemptions on November 12, 2015. Dckt. 18. The Trustee objects to the Debtor's exemptions because the Debtor has claimed exemptions under California Code of Civil Procedure § 703.140(b)(5) which exceeds the total amount of allowable exemption under the statute. California Code of Civil Procedure § 703.140(b)(5) allows for a maximum of $26,425.00 while the Debtor has claimed a total of $27,070.00 as exempt. This is $645.00 more than permitted by California Code of Civil Procedure § 703.140(b)(5). Pursuant to Debtor's Schedule C, the Debtor has claimed the following assets exempt under California Code of Civil Procedure § 703.140(b)(5):

Asset	Amount of Exemption Claimed
Mobil Home located at 5505 S. Grobe Street, Space 214, Rocklin, California	$15,000.00
El Dorado Savings Bank Account	$1,500.00

1998 Pontiac Grand Am	$500.00
2000 Dutchman 5th Wheel	$4,938.00
2003 Dodge 2500	$3,632.00
1975 24 ft Bayliner	$1,000.00
1980 12' Klamath Boat	$500.00
TOTAL	$27,070.00

Dckt. 1.

The Trustee requests that the court enter an order disallowing the exemptions for any amount in excess of $26,425.00.

The Debtor filed a reply to the Trustee's Objection on November 23, 2015. Dckt. 25. The Debtor states they have no opposition to the Trustee's objection, as the over-claiming under the statute was an unintentional error.

The court's review of the docket reveals that the Debtor has claimed an exemptions under California Code of Civil Procedure § 703.140(b)(5) in excess of the statutory maximum. The Debtor in their reply admit that this was a mistake due to the Debtor's counsel's software being upgraded. After the court's own review and the Debtor's admission, the Trustee's objection is well-taken. The Trustee's objection is sustained and the claimed exemptions under California Code of Civil Procedure § 703.140(b)(5) are disallowed in any amount in excess of $26,425.00.

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 Exemptions 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 is sustained and the claimed exemptions under California Code of Civil Procedure § 703.140(b)(5) are disallowed in any amount in excess of $26,425.00.

36. 15-25098-E-13 NESTOR ROCES **MOTION FOR COMPENSATION FOR**
BHS-2 Paul Bains **BARRY H. SPITZER, TRUSTEE'S ATTORNEY**
11-16-15 [50]

Final Ruling: No appearance at the December 15, 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, Creditors, parties requesting special notice, and Office of the United States Trustee on November 16, 2015. By the court's calculation, 29 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). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Allowance of Professional Fees is granted.

The Law Office of Barry H. Spitzer, the Attorney ("Applicant") for Geoffrey Richards, the former Chapter 7 Trustee ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 2, 2015, through November 16, 2015. The order of the court approving employment of Applicant was entered on September 15, 2015. Dckt. 14. Applicant requests fees in the amount of $1,680.00.

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 general case administration. The Applicant, during the time of the Chapter 7, represented the Chapter 7 Trustee and discussed the grounds for the case to be converted. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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.

General Case Administration: Applicant spent 4.8 hours in this category. Applicant communicated with the client and reviewed documents for the conversion.

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**
Barry Spitzer	4.8	$350.00	$1,680.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,680.00

Costs and Expenses

Applicant does not seek recovery of costs.

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 and Final Fees in the amount of $1,680.00 are approved pursuant to 11 U.S.C. § 330] 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 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 $1,680.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 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 The Law Office of Barry H. Spitzer ("Applicant"), Attorney for the former Chapter 7 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 Law Office of Barry H. Spitzer is allowed the following fees and expenses as a professional of the Estate:
>
> The Law Office of Barry H. Spitzer, Professional Employed by former Chapter 7 Trustee
>
> Fees in the amount of $1,680.00
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $1,680.00 are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee 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.

37. 15-25098-E-13 NESTOR ROCES
GMR-2 Paul Bains

MOTION FOR COMPENSATION FOR GEOFFREY RICHARDS, CHAPTER 7 TRUSTEE
11-14-15 [45]

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 November 14, 2015. By the court's calculation, 31 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 granted.

Geoffrey Richards, the Chapter 7 Trustee ("Applicant") before this case was converted to a Chapter 13, makes a Fist and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period June 25, 2015, through November 6, 2015. Dckt. 35. The order of the court approving employment of Applicant was entered on June 25, 2015. Dckt. 2. Applicant requests fees in the amount of $2,453.75.

DEBTOR'S OPPOSITION

Nestor Roces ("Debtor") filed an opposition on December 1, 2015. Dckt. 65. Debtor objects on the limited grounds that Trustee should not be paid as a priority before other administrative claims in the same class. Debtor requests that Trustee be treated as an administrative claim to be paid under section 2.07 of the plan on a pro-rata basis.

APPLICANT'S RESPONSE

Applicant filed a response on December 2, 2015. Dckt. 67. Trustee agrees, and clarifies that the priority language was an error. In sum, Trustee agrees to be paid under section 2.07 in a manner consistent with other administrative claims.

STATUTORY BASIS FOR TRUSTEE 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 a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "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 general case administration. The Applicant worked along side Debtor and Debtor’s counsel to determine the feasibility and viability of converting the Chapter 7 to a Chapter 13. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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.

General Case Administration: Applicant spent 7.55 hours in this category. Applicant assisted Client with communicating with his counsel and third parties, and both preparing and reviewing documents in the Chapter 7 case.

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
Geoffrey Richards	7.55	$325.00	$2,453.75
	0	$0.00	$0.00
Total Fees For Period of Application			$2,453.75

Dckt. 48, Exh. A.

Costs and Expenses

Applicant does not seeks recovery of costs and expenses.

FEES AND COSTS & EXPENSES ALLOWED

11 U.S.C. § 326 Trustee Fee Maximum

The Trustee assets that due to his investigation and identification of assets, creditors were likely to receive a substantial, if not 100% dividend on claims in this bankruptcy case. Debtor does not oppose the $2,453.75 amount (which the Trustee computes using a $325 an hour rate and asserts having spent 7.75 hours for which the compensation is computed). For unsecured claims alone, the Chapter 13 Plan provides for a 100% dividend for $34,244.69 in claims, as well as an additional $11,407.00 for the Class 5 unsecured priority claim.

The court's review of Amended Schedule A discloses that Debtor owns real property with an equity of approximately $160,000. Dckt. 17 at 4. Of this, $75,000 is claimed as exempt on Amended Schedule C. *Id.* at 8.

Thus it appears that the Chapter 7 Trustee would have made disbursements in the case, if it had remained under Chapter 7, such that the amount requested does not exceed the 11 U.S.C. § 326 maximum.

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,453.75 are approved pursuant to 11 U.S.C. § 330 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 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 $2,453.75

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 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 Geoffrey Richards ("Applicant"), the former Chapter 7 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 Geoffrey Richards is allowed the following fees and expenses as a professional of the Estate:
>
> Geoffrey Richards, Professional Appointed by the Court
>
> Fees in the amount of $2,453.75
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $2,453.75 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee 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.

38. 15-27799-E-13 MARK LUNA
BF-5 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
11-17-15 [18]

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, Debtor's Attorney, Chapter 13 Trustee on November 17, 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. At the hearing ----------.

The court's decision is to sustain the Objection.

Bank of America, N.A., the Creditor, opposes confirmation of the Plan on the basis that the proposed plan understates the pre-petition arrearage owed to the Creditor. The plan provides for only $21,253.54 in arrearages when the Creditor states that the Debtor owes approximately $26,538.79 in arrearages.

The Creditor's objections are well-taken. The Plan does not propose to cure all of these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B).

The proposed plan provides for a $1,905.00 a month payment. As proposed, $1,620.00 of it already is going to Bank of America, N.A. for its current and the cure of the lower stated arrearage amount. For the additional $5,000.00 arrearage stated, over sixty months Debtor would have to pay Bank of America, N.A. an additional $83.00 a month. The court computes the distribution of the $1,905.00 plan payment as follows:

Plan Payment	$1,905.00
Chapter 13 Debtor Attorneys' Fees	($33.30)
Chapter 13 Trustee 6% Estimate	($114.30)
Class 1 Bank of America, N.A.	
Post-Petition Current	($1,270.82)
$26,538.79 Arrearage Amortized Over 60 months at 0% Interest	($442.31)
Class 2 CA Check Cash	($52.00)
Class 5 IRS	($20.07)
Class 7 General Unsecured (Based on POC Filed)	($63.64)
Over/(Under) Funding of Plan	($91.44)

As proposed, the Chapter 13 Plan, when the higher arrearage amount alleged to be owed to Bank of America, N.A. is included, the plan is under funded. However, no Proof of Claim has been filed by Bank of America, N.A. No declaration has been filed by Bank of American, N.A. with any person testifying under penalty of perjury the amount of the claim. The only thing presented to the court is argument of counsel as to what counsel contends is the Bank's claim. The court cannot sustain the objection on the mere factual arguments (for which no evidence is provided) of counsel.

However, the increased arrearage asserted by Bank of America, N.A.

requires only an additional $83.00 a month. The court, when it looked for the Bank of America, N.A. proof of claim noted that a single creditor has filed a general unsecured claim which is triple the amount of the total unsecured claims stated by Debtor in the Plan. Additionally, the court notes that an additional secured claim in the amount of $52,228.19 has been filed by the U.S. Department of Housing and Urban Development. Proof of Claim No. 1. The proposed Chapter 13 Plan does not provide for this claim.

While the unsupported arguments of Bank of America, N.A. do not, in and of themselves, warrant denial of confirmation, the court's files demonstrate that there are not claims which are not sufficiently provided for the proposed Plan. The court sustains the objection.

Because the proposed Chapter 13 Plan fails to provide for the claims listed in the plan and filed in this case, the plan cannot be confirmed. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The objection is sustained and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

39. 12-22167-E-13 MICHAEL/TANYA CHILSON
BLG-3 Chad M. Johnson

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR PAULDEEP BAINS, DEBTORS' ATTORNEY(S)
11-10-15 [50]

Final Ruling: No appearance at the December 15, 2015 hearing is required.

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, Creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2015. By the court's calculation, 28 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 granted.

Pauldeep Bains, the Attorney ("Applicant") for Michael and Tanya Chilson, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 3, 2012 through December 8, 2015. Applicant requests fees in the amount of $1,890.00 and costs in the amount of $36.47.

Applicant notes that, pursuant to the executed copy of this court's Rights and Responsibilities of Chapter 13 Debtors and their Attorney, Applicant has been paid $2,000.00 by the David Cusick, the Chapter 13 Trustee. Under that document, Applicant was set to receive $3,500.00 for services rendered.

APPLICANT'S MOTION FOR COMPENSATION

Applicant's motion asserts the following grounds for compensation beyond the No-Look Fee received in this case:

A. Since confirmation of the May 7, 2012 Plan, Bankruptcy Law Group has been required to complete a significant amount of additional work as necessitated by unforeseeable circumstances;

B. Applicant's firm has completed 2.3 hours of "Case Admin," of which 0 were charged;

C. Applicant has communicated with debtors and trustee on income, expense VA lump sum payment and inheritance, prepared an "MTM and Modified Plan," which took 14.1 hours. Applicant is not charging for 7.8 hours;

D. The firm also completed the instant Motion for Additional Attorney Fees, which took 2.0 hours. Applicant is charging 0 hours for this work.

Dckt. 50.

To support this motion, Applicant filed the Declaration of Pauldeep Bains on November 10, 2015. Dckt. 52. The Declaration states:

A. It was unanticipated when the debtor's filed their Chapter 13 that their income and expenses would change and that they would need to lower their monthly plan payment. Furthermore, it was unanticipated that debtors would receive an inheritance and VA disability back pay allowing an additional lump sum payment towards their Chapter 13 proceeding;

B. It was necessary to prepare and file Motion to modify BLG-2 to reflect the changes in the monthly income and expenses and to account for an inheritance and a lump sum of VA disability back pay;

C. I believe the circumstances that have been described in the motion, are beyond what should be considered "typical" in a Chapter 13 case as described In re Pedersen 229 B.R. 445 (Bankr. E.D.Cal. 1999).

Id. at ¶ 3-5.

Also, Applicant filed an Exhibit A on November 10, 2015. Dckt. 53. FN.1. Because this document has not been authenticated and no hearsay exception was provided, this evidence cannot be considered by the court. Fed. R. Evid. 801, 803, 901, 902.

Finally, Applicant filed a Supplemental Bains Declaration on November 12, 2015. Dckt. 56. The Supplemental Bains Declaration corrects an error in the Motion, stating that Jan P. Johnson was the Chapter 13 Trustee, and requests that David Cusick's name be inserted into the relief requested instead. *Id.*

DECEMBER 8, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on December 15, 2015 to offer the Applicant the opportunity to submit a supplemental declaration to justify how the fees are substantial and unanticipated.

DECEMBER 8, 2015 SUPPLEMENTAL DECLARATION

On December 8, 2015, the Applicant filed a Supplemental Declaration. Dckt. 61. This supplemental declaration only adds the following two lines to the Applicant's previous declaration:

3. As shown by the time accounting submitted with the application and filed herein as Exhibit A, an excess amount of time was required in this Chapter 13 proceeding due to changing and unforseen circumstances.

4. I have reviewed the accounting submitted as Exhibit A and it is true and correct copy of the work performed in this case.

Id.

APPLICABLE LAW

NO-LOOK FEES

The payment that counsel receives under the "no-look" fee, after it is elected and confirmed in the confirmation order, is viewed by the court as generally sufficient to fairly compensate counsel for all pre-confirmation and most post-confirmation services such as reviewing notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to claims filed.

Local Rule 2016-1 governs no-look fees in Chapter 13 cases and states in relevant part:

> (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 in $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 Subprt, 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 post-confirmation 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).

Bankr. E.D. Cal. R. 2016-1.

The United State Bankruptcy Court for the Eastern District of California issued the *Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases*, which states in relative part:

> 4. If counsel has filed an executed copy of the "Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys," but the initial fee is not sufficient to fully compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The court will not approve, however, additional compensation in cases in which no plan is confirmed, or for work necessary to confirm the initial plan. Further, counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. This fee is sufficient to fairly compensate counsel for all preconfirmation services and most post-confirmation 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. . .

Guidelines for Payment of Attorneys' Fees in Chapter 13 Cases.

DISCUSSION

The Rights and Responsibilities of Debtor and Attorney, filed February 3, 2012 and referred to by Applicant, states that after the case is filed Applicant agreed to:

> 5. Prepare, file, and serve necessary modifications to the plan which may include suspending, lowering, or increasing plan payments.
>
> 6. Prepare, file, and serve necessary amended statements and schedules, in accordance with information by the debtor.
>
> ...
>
> 11. Provide such other legal services as are necessary for the administration of the present case before the Bankruptcy Court.

Dckt. 7. p. 2. One reading of this could be that Applicant had agreed to provided services to modify the plan and other legal services necessary for the administration of the case under the No-Look Fee. But the court finds that such an interpretation would be unreasonable. Rather, the court finds that the attorney agrees to provide such legal services, but not include all of them as part of the No-Look Fee. (Counsel may want to review the way this stated and more clearly state what is properly included in the No-Look Fee).

The court finds that the additional $1,926.47 and costs of $36.47 are for reasonable and necessary services, which were substantial and unanticipated. Such amounts are allowed in addition to the no look fee 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 Pauldeep Bains ("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 granted, and Pauldeep Bains, of the Bankruptcy Law Group, PC, is allowed additional fees in the amount of $1,926.47 and costs of $36.47, in excess of the No-Look Fees approved in this case. These additional fees may be paid by the Chapter 13 Trustee as provided in the Chapter 13 Plan.

40. 12-40951-E-13 KATHERINE KRAY — MOTION TO INCUR DEBT
MET-4 Mary Ellen Terranella — 12-8-15 [48]

Final Ruling: No appearance at the December 15, 2015 hearing is required.

The matter is removed from the calendar.