UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

January 13, 2015 at 3:00 p.m.

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1. 11-26901-E-13 DAVID/JULIE RANDEL — MOTION TO VALUE COLLATERAL OF E TRADE BANK
SS-2 Scott Shumaker — 12-15-14 [76]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of E*TRADE Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Julie and David Randel ("Debtor") to value the secured claim of E*TRADE Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3500 Contempo Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $171,000.00 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). FN.1.

FN.1. The Debtor notes that on April 26, 2011, the court granted Debtors'

Motion to Value Collateral of BAC Home Loans. Dckt. 27. However, the original Motion was not served upon BAC Home Loans servicing at the notice address provided in its Proof of Claim filed May 17, 2011. Additionally, on August 16, 2011, BAC Home Loans Servicing, LP transferred its claim to Creditor and BAC Home Loans Servicing, LP is no longer in existence. Debtor files the instant Motion out of an abundance of caution and to ensure that Creditor has proper notice of the Motion to Value and to give the Creditor the opportunity to object.

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 senior in priority first deed of trust secures a claim with a balance of approximately $259,906.00. Creditor's second deed of trust secures a claim with a balance of approximately $32,292.00. 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 David and Julie Randel ("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 E*TRADE Bank secured by a second in priority deed of trust recorded against the real property commonly known as 3500 Contempo Drive, Sacramento, 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 $171,000.00 and is encumbered by senior liens securing claims in the amount of $259,906.00, which exceed the value of the Property which is subject to Creditor's lien.

2. 12-33903-E-13 JOHN MOORE **MOTION TO MODIFY PLAN**
SJS-4 Scott Johnson **12-2-14 [59]**

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 December 2, 2014. 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 deny the Motion to Confirm the Modified Plan.

John Moore ("Debtor") filed the instant Motion to Modify Plan on December 2, 2014. Dckt. 59. Debtor states that the proposed Modified Plan lowers the administrative expenses in Section 2.07 to $79.00. Debtor has also adjusted the amount of arrears owed to Class 1 creditor, Wells Fargo Bank, N.A., and provided an Additional Provision to address the dividends. Debtor has also adjusted the monthly contract amount pursuant to the recently filed Notice of Mortgage Payment Change. Debtor has adjusted the priority claim amount of the State Board of Equalization in Class 5 based upon their Proof of Claim.

The modifications require a slight increase in the Debtor's monthly plan payment. Debtor has elected to extend the duration of his Chapter 13 plan from 36 months to 38 months.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 18, 2014. Dckt. 68. The Trustee objects on the following grounds:

1. The Trustee is uncertain Debtor will be able to afford the proposed increased plan payment in the 42nd month.

The Additional Provisions propose a plan payment of $42,313.00 total paid in through November 2014, $1,610.00 per month commencing December 25, 2014, then $3,236.73 commencing January 25, 2016 for the remainder of the plan. Debtors plan payment under the confirmed plan is $1,566.00 for 60 months.

Debtor's Declaration states that Debtors modified plan proposes a slight increase in the plan payment, which will be accommodated by reducing the telephone, cell phone, internet, satellite, and cable budget from $150.00 to $100.00. Dckt. 65.

Debtor's Amended Schedule J reflects the $50.00 reduction and indicates Debtor has a monthly net income of $1,616.00. Dckt. 58.

Debtor does not indicate how he will afford the $1,626.73 plan payment increase in the 41st month of the plan, even if they receive a reasonable loan modification in January/February 2015.

2. Debtor's modified Plan indicates Debtor has paid a total of $42,313.00 to the Trustee through November 2014, when the Trustee's records reflect that the Debtor has actually paid in $43,883.00, with the last payment of $1,570.00 having posted November 26, 2014.

3. Debtor's Amended Schedule J indicates Debtor's monthly expenses are $1,019.00, his monthly income from Schedule I is $2,635.00, leaving a monthly net income of $1,616.00. Attachment A appears to be business expenses in the amount of $906.00, which are not included on Schedule J. Debtor's prior Schedule J (Dckt. 1, pg. 23) includes business expenses of $906.00. FN.1.

FN.1. Though denominated as an "Amended" Schedule J, this appears to be a "Supplemental" Schedule J showing the court post-petition changes in the Debtor's expenses. If accepted as an "Amended" Schedule, the Debtor would be

stating under penalty of perjury that his expenses were only $1,019.00 as of the commencement of this case and through the present. This is substantially less than the $1,975.00 listed on Original Schedule I under penalty of perjury (Dckt. 1 at 23) and indicates that the Debtor had an additional $956.00 a month in projected disposable income which he (1) failed to properly report and (2) failed to provide for creditors through his Chapter 13 Plan to date. Accepted as a Supplemental Schedule J as of the December 2, 2014 filing (Dckt. 58) would indicate that the Debtor has been able to reduce his expenses to the current $1,019.00 due to post-petition changes in expenses.

Debtor has not filed Supplemental Schedule I, but Debtor's prior Schedule I filed July 30, 2012 (Dckt. 1, pg. 22) indicates Debtor is self employed with an average monthly income of $3,541.00, not $2,635.00 as stated on Debtor's "Amended" Schedule J. If Debtor's business expenses of $906.00 were included on amended Schedule J, Debtor would not be able to afford the proposed plan payment of $1,610.00, but only $710.00.

DISCUSSION

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

The Trustee's objections are well-taken. While the second objection appears to be a mere scrivener's error in the Motion and proposed Plan, the remaining two objections highlight feasibility issues with the proposed Plan.

A review of the Schedules and the Amended Schedules shows that Debtor may not be able to afford the step-up in plan payments under the proposed Plan. As the Debtor's finances are currently presented, the Debtor will be unable to make the plan payments starting on the 41st month under the Debtor's current disposable income.

As to the third objection, the Debtor has not provided information as to what happened to the business expenses and why there is a change in Debtor's monthly income on the Amended Schedule J. The court, looking only at the Schedules filed, finds that the discrepancy in the income listed on Schedule I and Amended Schedule J and the absence of the business expenses on the Amended Schedule J raises sufficient feasibility concerns of the proposed plan that the court cannot confirm the Plan.

Therefore, because of the discrepancy in income, the absence of the business expenses, and the Debtor's apparent inability to make the plan payments beginning on the 41st month, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. 14-23504-E-13 SJS-3 — SHERMAN/MAXINE THOMPSON — Scott Johnson — CONTINUED MOTION TO CONFIRM PLAN — 10-28-14 [70]

Final Ruling: No appearance at the January 13, 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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 28, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 Amended.

Maxine Thompson ("Debtor") filed the instant Motion to Confirm First Amended Plan on October 28, 2014. Dckt. 70. Debtor states that the purpose of the amended plan is to increase the monthly administrative expenses pursuant to Section 2.07. The Debtor has also amended her Chapter 13 plan to decrease the amount owed and monthly dividend for secured creditor Safe Credit Union in Class 2A based upon its Proof of Claim No. 3-1.

Debtor has added the secured claim of creditor Wells Fargo Bank to Class 2A to address a nominal amount of pre-filing mortgage arrears in Claim 12-1 and provided for its treatment in the Additional Provisions. Debtor has also amended her Schedule D to remove Unifund CCR Partners and replace it with secured creditor Northstar Capital Acquisition Assignee of Wells Fargo Financial in Class 2C. Debtor states that she has already filed a Motion to Void Lien. Based upon the Proof of Claim filed by Wells Fargo Bank (Claim 12-1), Debtor has a new mortgage payment commencing May 1, 2014 of $1,603.76. Debtor has amended the monthly contract installment amount in Class 4 to match this new payment. The Debtor has reduced the priority amount owed to the California Franchise Tax Board to $339.08 based upon the Franchise Tax Board's Proof of Claim No. 6-1. The Debtor has increased the priority amount owed to the Internal Revenue Service to $30,161.80 based upon the Internal Revenue Service's Proof of Claim No. 2-1.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 1, 2014. Dckt. 81. The Trustee objects on the following grounds:

1.The Debtor has failed to re-set the hearing on the Motion to Avoid Lien. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor's Motion to Avoid Lien of Northstar Capital Acquisition (DCN SJS-2) was heard and denied by the court on September 30, 2014 and the Debtor has failed to re-set the hearing date. Dckt. 63.

DECEMBER 16, 2014 HEARING

The court continued the hearing on the instant Motion to 3:00 p.m. on January 13, 2015 to be heard in conjunction with the Debtor's Motion to Avoid Lien.

DISCUSSION

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

The court having granted the Motion to Avoid the Lien of Northstar Capital Acquisition at the January 13, 2015, the Trustee's objection is overruled.

Therefore, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 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, 2014 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.

4. 14-23504-E-13 SJS-4 SHERMAN/MAXINE THOMPSON Scott Johnson

MOTION TO AVOID LIEN OF NORTHSTAR CAPITAL ACQUISITION 12-11-14 [84]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 11, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Northstar Capital Acquisition Assignee of Wells Fargo Financial ("Creditor") against property of Maxine Thompson ("Debtor") commonly known as 11 Parkshore Circle, Sacramento, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,395.48. An abstract of judgment was recorded with Sacramento County on August 22, 2011 which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $321,486.00 as of the date of the petition. The unavoidable consensual liens total $518,569.47 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $15,413.84 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Northstar Capital Acquisition Assignee of Wells Fargo Financial, California Superior Court for Sacramento County Case No. 34-2009-00033452-CL-CL-GDS, recorded on August 22, 2011, Book 20110822 and Page 1303 with the Sacramento County Recorder, against the real property commonly known as 11 Parkshore Circle, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

5. 10-46406-E-13 CORINA GARCIA **MOTION FOR CONTEMPT**
PGM-1 Peter Macaluso **11-20-14 [32]**

Tentative Ruling: The Motion for Contempt 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, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

The Motion for Contempt 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 for Contempt is denied.

Corina Garcia ("Debtor") filed the instant Motion for Contempt on November 20, 2014. Dckt. 32. The Debtor is seeking an Order to Show Cause Concerning the Violation of the Automatic Stay Under 11 U.S.C. § 362(a) and (k) against Pacific Service Credit Union ("Creditor"). The Debtor is asking for declaratory and injunctive relief by the court to determine:

1. Whether Creditor should be held liable for violating the automatic stay arising from the payment of the secured portion of a class 2 claim, and the withholding of the insurance proceeds from an automobile accident claim, by Creditor, which amounts to the unsecured portion of the proof of claim filed by Creditor in the instant Chapter 13 case, Claim No. 2-1, withing the Chapter 13 Plan Confirmation, and

2. Whether Creditor is in violation of 11 U.S.C. § 362(a), by continuing to "hold" these insurance proceeds, and

3. Whether Creditor should be held liable for damages pursuant to 11 U.S.C. § 362(k).

The Debtors state that on August 9, 2014, the Debtor was in an automobile accident and the 2003 Acura MDX was totaled by the insurance company. During the period of November 30, 2010 through September 30, 2014, the Chapter 13 Trustee, pursuant to the confirmed Chapter 13 Plan and Creditor's claim, disbursed a total of $10,000.00 for the secured portion of their claim. This disbursement of $10,000.00 paid in full the Creditor's secured claim.

The Debtor alleges that on or about August 29, 2014, Debtor received notification that the insurance company had paid Creditor $8,700.00. Debtor was told by Creditor that they would be keeping the funds until they receive notice of the discharge. From October 17, 2014 through October 25, 2014, Debtor's counsel spoke to Creditor's counsel, who stated that the funds would be sent to the Trustee. As of November 13, 2014, the said funds were not sent to the Trustee. The Debtor asserts that the Creditor continues to assert various reasons why it is not refunding the money to the Debtor nor turning it over to the Trustee.

Debtor states that on October 4, 2010, an automatic stay came into effect with the filing of the bankruptcy petition under 11 U.S.C. § 362(a). Debtor's plan was confirmed on December 13, 2010. Dckt. 14.

Debtor argues that the Creditor voluntarily accepted the court's jurisdiction by filing the secured claim and that the Creditor was paid pursuant to the confirmed Plan and the motion to value which split the claim into secured debt and general unsecured.

Debtor argues that the holding of the funds constitutes further collections in violation of the automatic stay order.

TRUSTEE'S RESPONSE

David Cacique, the Chapter 13 Trustee, filed a response to the instant Motion on December 16, 2014. Dckt. 38. The Trustee states that:

1. The Trustee has paid Creditor $10,000.00 in principal and $866.51 in interest on the secured claim filed by the creditor (Proof of Claim No. 2) which was valued at $10,000.00 (Dckt. 14). An unsecured claim in the amount of $15,547.18 remains outstanding based on the order valuing Creditor's secured claim. Order, Dckt. 29.

2. The Trustee received a Cashier's Check dated November 4, 2014 from Creditor in the amount of $8,770.64. The Trustee put the funds in his Adjustment Account on November 6, 2014. The Trustee has deposited the monied in his Adjustment Account as the funds are not called for as payment under the plan.

CREDITOR'S RESPONSE

Creditor filed a response to the instant Motion on December 22, 2014. Dckt. 41. After restating the background of the relationship between the Creditor and Debtor, the Creditor argues that:

1. Creditor has not disobeyed any court order. Instead, Creditor did exactly what Debtor's counsel request, and sent the insurance proceeds at issue to the Trustee pending further order of the court, despite Debtor's counsel failure to cite any authority for the proposition that such turnover was required.

2. Creditor did not violate the automatic stay by holding the funds because the Creditor turned over the insurance proceeds to the Trustee before the Debtor filed the instant Motion.

3. Creditor did not violate the automatic stay by holding the funds because Debtor has failed to identify any provision of 11 U.S.C. § 362 that Creditor would have violated even if Creditor had decided to retain possession of the proceeds. The proceeds are not property of the Debtor or property of the estate, since they came from a third party and were paid directly to Creditor four years after commencement of the bankruptcy case. Debtor's counsel appears to believe that the retention of the proceeds is an "act to collect, assess, or recover a claim against the debtor" within the meaning of § 362(a)(6). However, the Motion fails to cite any authority supporting that argument. AN.1.

AN.1. Further, this argument appears to fail to address Debtor's interest in insurance proceeds. If Creditor's argument had legal significance, presumably Creditor would (1) have provided legal authority for such proposition and (2) be arguing since that the Debtor didn't have any interest sufficient to bring the automatic stay into effect, then Creditor "owned" all of the money and could retain it. Turning the money over to the Trustee tacitly acknowledges at least an acknowledged interest of the bankruptcy estate (which is protected by the automatic stay) and by extension the interest of the Debtor in recessed property as provided in the confirmed Chapter 13 Plan.

Creditor cites *Advanced Ribbons and Office Products, Inc. v. Interstate Distributing, Inc. (In re Advanced Ribbons and Office Products, Inc.),* 125 BR. 259, 263-64 (BAP. . 9th Cir. 1991), as standing for the proposition that a creditor's proper exercise of contractual and state law rights against a non-debtor third party is not subject to the automatic stay. Specifically, the Creditor cites the B.A.P.'s holding that:

> The automatic stay of section 362(a) protects only the debtor, property of the debtor or property of the estate. See, e.g., *In re Casgul of Nevada, Inc.*, 22 BR. 65, 66 (9th Cir. BAP 1982). It does not protect non-debtor parties or their property. See, e.g., *Credit Alliance Corp. v. Williams*, 851 F.2d 119, 121-122 (4th Cir.1988); *Casgul of Nevada*, 22 BR. at 66. Thus, section 362(a) does not stay actions against guarantors, sureties, corporate affiliates, or other non-debtor parties liable on the debts of the debtor. See, e.g., *Ingersoll Rand Financial Corp. v. Miller Mining Co.*, 817 F.2d 1424, 1427 (9th Cir.1987) (guarantors); *In re Lockard*, 884 F.2d 1171 (9th Cir.1989) (automatic stay did not prevent an action against a surety on a contractor's bond); see also 2 Collier on Bankruptcy, § 362.02[1] at 36229 (15th ed. 1990).

Id. at 263.

Creditor argues that Creditor's collection of the insurance proceeds would be an act to enforce Pacific's rights under state law against Geico, the non-debtor insurer. Geico paid the proceeds directly to Creditor four years after the petition date. The proceeds, therefore, are not property of the Debtor or the estate and the automatic stay does not apply. However, Creditor offers no authority for the proposition that the proceeds paid on an insurance policy which was obtained and maintained by the Debtor are not property of the bankruptcy estate or the Debtor. At issue is not Creditor's conduct against a third-party insurance company or surety, but the proceeds paid pursuant to the Debtor's insurance policy to insure property of the Debtor.

The Creditor requests that the court deny the order. Furthermore, to the extent the court is prepared to issue further instructions concerning the disposition of the insurance proceeds, the Creditor requests that the court order the Trustee to destroy the cashier's check received from Creditor or to send it back.

DEBTOR'S REPLY

The Debtor filed a reply on January 7, 2015. Dckt. 45. After restating the facts, the Debtor begins by arguing that the secured claim of the Creditor being paid off vests the equity earned post-petition in the debtor, which in this instance was no longer $10,000.00, but $8,770.64, or the amount of the funds. Creditor has violated the order confirming the plan as these insurance proceeds are property of the bankruptcy estate that vested to Debtor upon confirmation, and the equity obtained when the secured claim was satisfied is subject to 11 U.S.C. § 362 and the confirmed plan.

Debtor argues that while Creditor may have a right under the insurance contract, the fact that the secured claim has been paid off negates that right since it vested in the Debtor. Debtor argues that the Creditor should have filed a relief from stay which would require a showing of "cause" which the Debtor believes would have been denied because of Debtor's equity in the vehicle and the secured being paid in full.

Debtor states that the Creditor is incorrect in the assertion that the Debtor has the obligation to enforce court orders.

The Debtor argues that these funds are post petition estate property vested in the Debtor and should be disbursed to Debtor, or in the alternative, held by the Trustee until the discharge of the case and then released to Debtor.

DISCUSSION

The court first notes that while the Parties have submitted briefs long on argument, they are short on legal authorities. It appears that Creditor, arguably the more sophisticated party, has taken the tack of ignoring California law concerning insurance policies and the right to proceeds thereof. Further, that Creditor's position is merely that of a creditor who possibly is asserting a lien on insurance proceeds. Possibly because of the Debtor's failure to identify the applicable California insurance law and the insurance contract provisions, this sophisticated Creditor believed that this proceeding consisted merely of parties making allegations and (1) the court being satisfied being ignorant of the law or (2) that the court would provide free

legal services for the parties and subsidize their legal bills. Neither belief would be correct.

Debtor does little better with the Motion, for which no points and authorities was provided to the court. The Motion is more concerned with describing the concept of contempt for violating the Congressionally created injunction under the automatic stay rather than the legal basis for the alleged violation. Though the Motion runs six pages in length, the total text which appears to explain why (without legal citation) there has been violation of the automatic stay consists of "Further collections (holding of funds) are in violation of the automatic stay order in this case and the PSCU should be held to account for their actions." Motion, pg. 6:10-12; Dckt. 32.

The main contention of Debtor's Motion is that the Creditor violated the automatic stay by holding the insurance proceeds from August 29, 2014 (the date Debtor received notice that the Creditor was holding the funds) to November 4, 2014 (the date Creditor sent the funds to be held by the Trustee). The Debtor argues that because the plan was confirmed and the Creditor secured claim has been paid the secured claim amount determined under 11 U.S.C. § 506(a), the insurance proceeds have vested in the Debtor and the Creditor violated § 362 by holding onto the funds for any period of time. Debtor attempts to supplement the lack of pleading and providing a points and authorities in the "Reply" to the Opposition.

The facts are very simple. First, Creditor has a secured claim in this case. The secured claim is limited to $10,000.00 for purposes of the bankruptcy plan as determined by the court pursuant to 11 U.S.C. § 506(a), with the balance of the claim in excess of $15,000.00 being provided for as an unsecured claim in the Chapter 13 Plan. Second, Debtor has been performing the Chapter 13 Plan since 2010, with the 60 month term to be completed in September 2015 - just nine months from now. Third, the Debtor has not yet competed the Chapter 13 Plan.

Fourth, Creditor has been paid in full for its secured claim as determined pursuant to 11 U.S.C. § 506(a) for purposes on the Chapter 13 Plan. Upon completion of the Plan shall be foreclosed from demanding any additional monies for the secured claim and be at that time obligated to release its lien. See *In re Frazier*, 448 BR. 803 (Bankr. ED Cal. 2011), *affd.*, 469 BR. 803 (ED Cal. 2012), and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013), for discussion of "lien striping" in Chapter 13 case) for this court's analysis of this process. Fifth, the monthly plan payments are only $300.00, and the Debtor is assured of completing the Plan – even if the Debtor used $2,700.00 of the insurance proceeds to fund the last nine months of the plan rather than using the money for a replacement vehicle.

As the court understands the position asserted by Creditor it had a claim secured by the vehicle. Additional collateral for the obligation were the proceeds of insurance maintained by the Debtor on the vehicle. This is additional collateral – which is cash collateral as defined by 11 U.S.C. § 363(a). Though it is "cash collateral," it is still collateral – an asset of the Debtor or Estate which is subject to Creditor's lien. See *In re Coker*, 216 BR 843, (Bkcy. N.D. Ala 1997).

While the Creditor may of had "only" a security interest in the cash proceeds of the insurance policy, since the proceeds were cash collateral, the Debtor was prohibited from using the cash collateral without either (1) the consent of Creditor or (2) an order of the court. 11 U.S.C. § 363(c)(2). No such order was obtained from the court and it is clear that up until Creditor turned over the monies to the Trustee it was not consenting to any use by the Debtor. AN.2.

AN.2. Though the confirmed plan provides for revesting of the vehicle in the Debtor, such revesting is subject to being reversed if the Debtor defaults on the plan, the case is converted, or the case is dismissed. See 11 U.S.C. §§ 348 (effect of conversion) and 349 (effect of dismissal), and this court's discussion of the effect of confirmation of a Chapter 13 Plan and modification of the debtor-creditor rights becoming final upon completion of the Plan. See *In re Frazier* and *In re Martin*, *supra*. Additionally, the Plan does not provide for the disposition of proceeds of this collateral, as it anticipates the plan being completed, the creditor being paid $10,0900.00 on its secured claim, and the Debtor retaining the collateral upon completion of the plan with there being no further obligation (as modified by the completed plan) being secured by it.

The court concludes that to the extent that Creditor has violated the automatic stay by obtaining and retaining possession of the collateral, there has been no damage to the Debtor. Because the Plan has not yet been competed, the modified terms of the secured claim are not final. Thus, before the Debtor could use the proceeds the consent of the Creditor or order of the court must have been obtained. Such consent or order has not been obtained. Though there appears little reason why the court would not grant such relief to the Debtor, an order is required. At worst, the "violation" of the stay prevented the Debtor from making an inadvertent, unauthorized use of cash collateral.

The court assumes that the Debtor is in need of the money in order to pay for a replacement vehicle since the Acura was totaled in the accident. If the Debtor wishes to have these funds released to her, she could make a motion to the court for that relief.

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 for Contempt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

6. 12-41107-E-13 RENE'/SUSAN GARCIA — MOTION TO MODIFY PLAN
DEF-4 David Foyil — 11-14-14 [74]

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 14, 2014. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Rene and Susan Garcia ("Debtors") filed the instant Motion to Confirm the Modified Plan on November 11, 2014. Dckt. 74.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 23, 2014. Dckt. 85. The Trustee objects on the following grounds:

1. The months paid in stated in the Debtors' proposed plan payments differ from the Trustee's records, cause case to reflect delinquency. The Debtors have listed the proposed plan payments as "As of November 11, 2014 (months 1 through 24), the debtor has paid the trustee $12,461.92. The Chapter 13 plan payment for months 25 through 36 shall be $100." According to the Trustee's records, Debtors have paid in $13,041.00 through month 23, which is November 2014 where this case was filed on December 7, 2012, so the first

payment was due on January 25, 2013. Under the proposed modified plan, the Debtors' case appears to be delinquent $579.08.

2. The Debtors appear to be over median income, proposing to reduce Chapter 13 plan terms to 36 months. The Debtors are proposing to reduce plan term to 36 months from 60 months. The Statement of Current Monthly Income (B22C) filed on December 7, 2012 (Dckt. 1, pg. 42) reflects Debtors applicable commitment period is five years. The Trustee objects pursuant to 11 U.S.C. § 1325(b) as the Debtor does not propose for the plan to continue for the commitment period and the Debtors admit the commitment period is supposed to be 60 months (Dckt. 75, pg. 6, lines 14-15).

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objections on January 1, 2015. Dckt. 88. The Debtors respond as follows:

1. The amount set forth within the special provisions regarding the chapter 13 plan payments is not correct.

2. The Debtors consent to an order modifying the terms of the proposed plan with the following alternative provisions for section 6.05:

"As of November 3, 2014, Debtors has paid $13,041 (months 1 through 23). The Chapter 13 Plan Payment thereafter until the end of the plan (Months 24 through 36) shall be $100."

3. The Trustee is applying § 1325(b) as part of the requirements to confirm a plan. However, § 1325(b) is not the correct analysis. The court should be applying the requirements for § 1329 which refers to the requirements to modify a plan after the case is filed. Section 1325(b) does not apply to the extend that the minimal commencement period is required to confirm a modified plan. More specifically § 1329(c) speaks to the question rather or not a plan can be lengthen but does specifically address the issue rather a plan can be shortened.

DISCUSSION

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

The Trustee's objections are well-taken. While the Trustee's first objection can be corrected in the order confirming the plan, the Trustee's second objection remains unresolved.

The Trustee argues that the Debtors are above median Debtors and therefore must have a commitment period of five years. The Trustee points to the Debtors' Statement of Current Monthly Income in support. The Debtors' reply argues that the requirements under 11 U.S.C. § 1325(b) do not apply to modifications under § 1329. This assertion is incorrect.

11 U.S.C. § 1329(b)(1) specifically states "Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section." 11 U.S.C. § 1325(a) starts by saying, "Except as provided in subsection (b), the court shall confirm a plan if -".

Section 1325(a) specifically incorporates the limitations of 1125(b) into the requirements for plan confirmation. The Debtors' assertion that somehow a modification under 11 U.S.C. § 1329 bypasses the requirements of § 1325(b) lacks foundation as the plain language of the code section requires that any modification under § 1329 still meet the requirements of § 1325(b).

The Debtors' other argument concerning § 1329(c) is not relevant for the above analysis. All § 1329(c) does is explicitly state that the plan may not extend past the applicable commitment period unless the court for cause approves a longer period with a limitation on the court's approval. This limitation is not at issue in the instant case.

The court, in determining whether a modified plan can be confirmed, does apply the requirements of § 1329, which as discussed above, incorporates the requirements of § 1325(b). Since the proposed plan does not provide for a 60 month commitment period as required by § 1325(b), the plan is not confirmed.

To the extent that proper grounds exist for the court to not require the Debtors to fulfill their Applicable Commitment Period obligation (other than the Debtors merely don't want to have to make sixty months of payments), they may seek the relief of a "hardship discharge." 11 U.S.C. § 1328(b).

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

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

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

7. 12-37010-E-13 LITO/ANNA SAJONAS MOTION TO MODIFY PLAN
BLG-6 Paul Bains 11-20-14 [128]

Final Ruling: No appearance at the January 13, 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 November 20, 2014. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

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

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 November 20, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

8. 14-27015-E-13 MARY BURKE
PGM-1 Peter Macaluso

CONTINUED MOTION TO CONFIRM PLAN
10-9-14 [36]

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 9, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

Mary Burke ("Debtor") filed the Motion to Confirm her First Amended Plan on October 9, 2014. Dckt. 36. Debtor proposes a monthly payment of $1,905.00 starting October 2014 and continuing for the duration of the 60 month plan.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, filed an objection to this Motion on October 29, 2014. Dckt. 44. The Trustee objects because it is not

clear that Debtor can make the proposed plan payment. Debtor lists $41.00 on Schedule J for food and housekeeping expenses. This seems very low for one person. Debtor admitted at the First Meeting of Creditors on August 7, 2014 that the expenses listed for the newspaper route she covers have been reduced, since she changed routes. Debtor appears to show income of $400.00 from her son's rent, but has not received this in the past two years or year to date and has no declaration supporting this income. Further, Debtor has amended her Schedule J twice and has not explained the changes made.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's Objection on November 10, 2014. Dckt. 47. Debtor states that the $41.00 expense for food and housekeeping was a scrivener's error or a computer glitch. AN.1. Debtor did not intend that figure to be her food budget. Debtor's Counsel had to upgrade his computer system due to software errors that unexplainably corrupted client files. Debtor has included a Declaration of Debtor's son, Kalen Burke, in which he testifies that he will pay her $400.00 a month in rent to assist her in her Chapter 13.

AN.1. Debtor's reply states that the $41.00 expense is in error, but the Reply does not offer an alternative figure or state when this erroneous entry will be corrected.

NOVEMBER 25, 2014 HEARING

At the November 25, 2014 hearing, the court continued the hearing to allow the Debtor to file supplemental pleadings. The court ordered Debtor's Supplemental Pleadings be filed and served on or before December 12, 2014. Replies, if any, filed and served by December 19, 2014.

No supplemental pleadings have been filed in connection to the instant Motion.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Although the Declaration of Kalen Burke may address the Trustee's concern that the $400.00 rent payment will never materialize, Debtor has not corrected the erroneous $41.00 food and housekeeping expense figure. Debtor has also not explained the other changes made to Schedule J that the Trustee mentioned in his Objection. Without corrections and explanations for changes in Schedule J, the court cannot be sure that Debtor will be able to make the payments proposed under the Plan.

Though not referenced in the Opposition, the Debtor did file a Second Amended Schedule J on October 13, 2014. Dckt. 42. Debtor previously filed a First Amended Schedule J on August 15, 2014. Dckt. 20. The Debtor's statement of expenses under penalty of perjury evolve as follows:

Expense	Original Schedule J, Dckt. 1	First Amended Schedule J, Dckt. 20	Second Amended Schedule J, Dckt. 42

Home Maintenance, Repairs	$50.00	$50.00	$50.00
Electricity, Heat	$230.00	$230.00	$230.00
Water, Sewer, Garbage	$207.00	$207.00	$207.00
Phone, Cable, Internet	$245.00	$245.00	$245.00
Food, Housekeeping Supplies	$41.00	$391.00	$391.00
Clothing, Laundry	$40.00	$40.00	$40.00
Personal Care	$60.00	$60.00	$60.00
Medical and Dental	$60.00	$60.00	$60.00
Transportation	$650.00	$300.00	$300.00
Entertainment	$34.00	$34.00	$4.00
Charitable	$41.00	$41.00	$36.00
Health Ins	$0.00	$0.00	$0.00
Vehicle Ins	$238.83	$238.38	$238.38
	---------	--------	-------
Total	**$1,896.83**	**$1,896.38**	**$1,861.38**

Other than transportation the changes are minor and are in categories were reasonable "tweaks" can be made as part of a tight budget. However, Debtor offers no explanation for stating under penalty of perjury that her transportation expense was $650.00 and then it is reduced by $350.00. The court is confident that Debtor reviewed the Schedules before signing them under penalty of perjury. While the Debtor may have missed one scrivener's error, making two such substantial changes without explanation is not appropriate.

The court is concerned that the Debtor is not a active, fiduciary to the estate participant in this case, but merely "along for the ride," possibly doing the bidding of non-debtor third parties to advance their interests, not hers.

The Debtor has not filed any supplemental pleadings to rebut this conclusion even though the court afforded the Debtor the opportunity to explain the oversight in the Schedules.

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.

9. 10-39217-E-13 STEPHEN/ELIZABETH DICKSON MOTION TO MODIFY PLAN
GDC-2 Guy Chism 11-28-14 [201]

Final Ruling: No appearance at the January 13, 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 December 2, 2014. 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 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 court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on January 27, 2015 to be heard in conjunction with Trustee's Objection to Debtor's Claim of Exemptions (Dckt. 214).

Stephen Dickson ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 28, 2014. Dckt. 201.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 23, 2014. Dckt. 217. The Trustee objects as follows:

1. The Trustee is unsure if the Debtor will pass the Chapter 7 Liquidation Analysis. The Debtor has filed amended Schedules B and C (Dckt. 207, pgs 3-7) to address insurance and retirement policies, with an unknown value. The Trustee has objected to the exemptions claimed and scheduled a hearing for January 27, 2015.

If the Trustee is successful in the objection to exemptions, the Trustee believes the plan will not pay unsecured claims what they should receive under 11 U.S.C. § 1325(a)(4). If the Trustee is not successful in the objection, the Trustee has no other objection to the modified plan.

The Trustee requests the instant Motion be continued to 3:00 p.m. on January 27, 2015 to be heard in conjunction with the Trustee's objection.

DISCUSSION

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

Given the interconnectedness of the Trustee's objection to exemptions and the instant Motion, the court will continue the hearing to 3:00 p.m. on January 27, 2015 to be heard in conjunction with the Trustee's Objection to Debtor's Claim of Exemptions (Dckt. 214).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is continued to 3:00 p.m. on January 27, 2015 to be heard in conjunction with Trustee's Objection to Debtor's Claim of Exemptions (Dckt. 214).

10. 14-27117-E-13 ANTHONY/GWENDOLYN LAND — MOTION TO CONFIRM PLAN
SJS-2 Scott Johnson — 12-1-14 [54]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 1, 2014. 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.

Anthony and Gwendolyn Land ("Debtors") filed the instant Motion to Confirm the Amended Plan on December 1, 2014. Dckt. 54.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 12, 2014. Dckt. 64. The Trustee objects on the ground that the Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b).

The Debtors are over the median income and proposes plan payments of $1,700.00 total through November 2014 (4 months); then $440.00 for 56 months, with a 7.98% dividend to unsecured creditors, which totals $2,341.57.

Line 59 on amended Form B22C, Monthly Disposable Income, reflects $191.47 for 60 months. Therefore, the unsecured creditors would be entitled to $11,488.20.

The pay advices received show that both Debtors receive overtime income, which is not listed on Schedule I.

Anthony Land's pay advice dated January 31, 2014 showing gross income of $2,976.54 and his pay advice dated February 7, 2014 showing gross overtime income of $147.11. Dckt. 66, Exhibit A.

Gwendolyn Land's pay advice dated January 31, 2014 showing gross income of $3,034.60 and her pay advice dated February 7, 2014 showing gross overtime income of $157.19. Dckt. 66, Exhibit B.

The Trustee argues that the Debtors would need to increase the plan payment by $180.00 per month to pay the unsecured creditors what they are entitled.

The Trustee notes that the Trustee had previously filed an objection to Debtor's Motion to Confirm which was heard on October 7, 2014. Dckt. 45. The court denied the motion as the Plan was not the Debtors' best effort and was not filed in good faith.

DISCUSSION

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

The Trustee's objection is well-taken. A review of the amended Form B22C and the attached pay stubs for the Debtors show that the Debtors do not provide for the unsecured creditors in the plan as they should. The Debtors' Schedule I does not account for the overtime. It does not appear that the plan provides properly for the claims of the unsecured creditors and cannot be confirmed.

Therefore, 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.

11. 10-20818-E-13 ROBERT/RACHEL RUSSELL — MOTION FOR ENTRY OF DISCHARGE
Mark Wolff — 12-30-14 [75]

Tentative Ruling: The Motion For Entry of Discharge 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. No Proof of Service has been filed in connection with the Motion for Entry of Discharge. 14 days' notice is required.

The Motion For Entry of Discharge 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 For Entry of Discharge is denied without prejudice.

The Motion for Entry of Discharge has been filed by Rachel Russell ("Debtor").

However, Debtor has failed to file a Proof of Service in connection with the instant Motion. Without a Proof of Service, the court cannot determine if all necessary and proper parties were served. Therefore, the Motion is denied without prejudice.

The court notes that in the Motion, the Debtor states that co-Debtor Robert Russell passed away on August 20, 2014. A review of the docket shows that no motion has been filed to substitute in Debtor Rachel Russell as co-Debtor Robert Russell's representative.

It appears that the Debtor, in violation of Fed. R. Civ. P. 18, is attempting to combine two separate grounds for relief, namely: (1) Entry of Discharge and (2) Determination that Case Should Proceed Notwithstanding the death of one of the Debtors. This is improper.

The Debtor's first step should be to file a motion to be substituted in as the personal representative of the deceased Debtor. Without a personal representative present, there is no real party in interest in front of the court to issue any binding order, namely a discharge. The court has to determine if the personal representative can fulfill all duties and obligations of the deceased debtor. See Fed. R. Bankr. P. 1004.1.

The court would then need to determine if the personal representative is able to prosecute the case and whether there are any conflicts that would impede the proper progression of the case. The essential question will be whether it is in the best interest of the estate and debtor to continue the prosecution of the case.

If the personal representative is substituted in and it is found to be in the best interest of the estate to continue prosecution, then a motion for the entry of discharge may be proper.

The surviving Debtor and the personal representative of the Debtor could then complete the case and have the discharge issued by the Clerk of the Court in the ordinary course of business. The requirements for there to be the real party in interest before the federal court for the exercise of federal judicial power (U.S. Const. Art. III, Sec. 2) is not overruled by the Bankruptcy Code. Appointment of a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014 will meet the minimum Constitutional standing requirement, and the court's determination under Federal Rule of Bankruptcy Procedure 1016 will then allow the surviving Debtor and personal representative to conclude this case.

However, for purposes of the instant Motion, the court is unable to determine whether proper service was provided and, therefore, the Motion is denied without prejudice. Further, there is no personal representative to currently prosecute this case for the deceased Debtor. Finally, there is no reason shown why this case should not be prosecuted and the discharge entered in the normal manner prescribed by the Local Bankruptcy Rules.

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 Entry of Discharge filed by the Rachel Russell ("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.

12. 13-26718-E-13 ESPERANZA ZAVALA — MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso — 11-28-14 [66]

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 28, 2014. By the court's calculation, 46 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.

Esperanza Zavala ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 28, 2014. Dckt.66. The Debtor states that the reason for the modification is due to the high claimed tax debt liabilities which requires her to extend her plan terms.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 15, 2014. Dckt. 75.

The Trustee's limited objection is that the Debtor incorrectly states $2,640.00 has been paid through December 2014. The correct amount is $2,780.00.

DISCUSSION

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

The Trustee's limited objection concerning the incorrect amount being listed can be corrected when the Debtor prepares an appropriate order confirming the Plan. The scrivener's error can easily be corrected. With no other objections, the modified Plan is confirmed with the corrected amount reflected in the modified Plan.

The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 28, 2014 is confirmed with the amount paid into the Plan being corrected to $2,780.00, which shall be stated in the order confirming the Plan. 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. 14-27618-E-13 EJS-1 — JERRY WADLEY AND TRACY URBANO-WADLEY — Eric Schwab — MOTION TO CONFIRM PLAN — 11-26-14 [40]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2014. 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Jerry Wadley and Tracy Urbano-Wadley ("Debtors") filed the instant Motion to Confirm the Amended Plan on November 26, 2014. Dckt. 40.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 12, 2014. Dckt. 46. The Trustee objects on the ground that it appears that the Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). The Debtors are above the median income and proposes plan payments of $400.00 paid through August 2014 (4 months); then $300.00 for 56 months with a 58 % dividend to unsecured creditors, which totals $12,756.76. The Trustee argues the following grounds in support of his objection:

1. The Debtors' 2013 tax return provided to the Trustee reflects that the Debtors received a tax refund of $3,111.00. The Debtors have failed to propose to pay into the Plan any tax refunds received while in the 60 month

Plan. The Statement of Financial Affairs, question 2, does not disclose the tax refund income.

2. The Plan does not provide all of the Debtors' projected income for the applicable commitment period. The Trustee is not certain that the deductions on amended Schedule I for "401k loan payment" is reasonable and necessary for the maintenance and support of the Debtors or a dependent. The Debtors have not disclosed the amount of the loan and when it will be repaid. The plan payments do not increase after the loans are repaid, and the Debtors have not furnished evidence to show why the repayment of these loans are reasonably necessary. The Debtors must disclose this as the plan payment may need to increase after the loan is repaid.

3. The Additional Provisions of the Plan proposes

- Increase plan payments when 401k loan payments are completed within the plan term.

- Debtors will pay $400.00 total from August 2014 through November 2014.

- Debtors will pay $300.00 per month from December 2014 through July 2019.

The Debtors net disposable income on amended Schedule J reflects $300.00. The Debtors have failed to indicate when the 401k loans of $375.00 and $205.00 listed on amended Schedule I mature and when the plan payment will increase and by how much.

The Debtors amended Schedule I filed on November 26, 2014 reflects that Tracy Wadley's income has decreased from $3,833.00 gross to $2,848.00 gross without any explanation. Based on the Trustee's review of the Statement of Financial Affairs, question 1, and 2013 income return, the Trustee believes the amended schedule reflects her actual income. The Debtors provided a pay advice dated November 28, 2014 that reflects gross income of $1,369.72 bi-weekly, which more strongly supports the amended schedule than the original schedule.

CREDITOR'S OBJECTION

Donna Christin ("Creditor") filed an objection to the instant Motion on December 17, 2014. Dckt. 49.

The Creditor objects on the grounds that the amended Plan was filed in bad faith. The Creditor argues that the Debtors have committed perjury in willfully understating their income by a significant amount and have willfully violated 11 U.S.C. § 1325(a)(3), which requires that the plan be proposed in good faith and not by any means forbidden by law. The Creditor argues that the payment of the 401(k) loans as a debt in priority to other debts and the misstatement of the Debtors' financial reality on Schedule I and J are evidence of the filing being in bad faith.

DEBTORS' REPLY TO TRUSTEE'S OBJECTION

The Debtors filed a reply to the Trustee's objections on January 6, 2015. Dckt. 53. The Debtors reply to the Trustee's objections in order as such:

1. The Debtors will submit an order indicating that any tax refunds received while in the 60 month Plan will be paid into the Plan. In addition the Debtors will file an amendment to the Statement of Financial Affairs, question 2 to reflect the fact that they received a tax refund of $3,111.00 in 2013.

2. 11 U.S.C. § 362(b)(19) protects the "withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan. . .that is sponsored by the employer of the debtor. . .(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan." Because income from a debtor's wages are not protected by the automatic stay, "a plan may not materially alter the terms of a loan 11 U.S.C. § 362(b)(19) and amount required to repay such loan shall not constitute "disposable income" under section 1325." 11 U.S.C. § 1322(f)(19).

Therefore, the repayment of these loans are both reasonable and necessary. Indeed, if the amended plan did not permit the Debtors to make 401k loan payments, the Debtors would go into default on these obligations and would incur additional tax consequences and penalties.

3. The Debtors will submit an order expressly stating when the 401k loans will mature. There will be a presumption that the Plan payment will increase by the amount of each loan payment subject to rebuttal at that time if there has been a change in expenses or other circumstance.

DEBTORS' REPLY TO CREDITOR'S OBJECTION

The Debtors filed a reply to the Creditor's objections on January 6, 2015. Dckt. 51.

The Debtors first argue that the allegations that the Debtors inclusion of the 401k loans in the Plan is evidence of bad faith is unfounded and an incorrect reading of the court's prior holding. Debtors argue that the court's order on September 30, 2014 was concerning the continue contribution to the 401(k) and not the 401(k) repayment. The Debtors also make the argument that under 11 U.S.C. § § 362(b)(19) and 1322(f), the loan repayment is not "disposable income" for § 1325. The Debtors also highlight that the plan does provide that once the 401(k) loan is repaid that those monies will be put towards plan payments.

As to the Creditor's objection concerning the Debtors' income, the Debtors state that the Creditor fails to take into consideration that the Debtor is an hourly employee. Additionally, that the Debtor has to take certain days off to care for their daughter. The Debtors highlight that the Trustee stated in his opposition that he accepts the amended Schedule I as a truthful representation of the Debtors income.

DISCUSSION

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

The main contention in both the Creditor's and Trustee's objection is the provision in the plan to continue the repayment of the 401(k) loan. The

Debtors argue that under 11 U.S.C. § § 362(b)(19) and 1322(f), the loan repayment is not disposable income under 11 U.S.C. § 1325. The problem with this argument however is that the Debtors do not provide evidence how or why the 401(k) loan, in fact, qualifies under 11 U.S.C. § 362(b)(19). 11 U.S.C. § 362(b)(19) has a list of which programs qualify for to qualify under the section, including whether it falls under certain provision of the Internal Revenue Code of 1986 and whether it is under "section 408(b)(1) of the Employee Retirement Income security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986." It appears that the Debtors are merely arguing that "it is a 401(k) so it has to qualify." Unfortunately this is not sufficient.

However, the alternate of not having the 401(k) loan repayments to be allowed in the plan ends up being a detriment to the estate and the creditors. If the 401(k) loan payments were not allowed, the loan would have to be realized as income and taxed. This tax on the 401(k) loan would then be considered an administrative expense in the plan and paid ahead of the other classes. This alternative is not beneficial to any party.

As the Debtors' plan provides, once the 401(k) loan is repaid that $559.00 a month would then be put towards the plan, increases the plan payments. This is a much better result than the potential priority tax claim that would arise if the Debtors were to stop paying the 401(k) loan.

The court is willing to accept that this is a retirement plan through the Debtors' employer. The court also finds that, in weighing the 401(k) loan being paid through the plan versus having the 401(k) loan taxed, the best course of action is to have the 401(k) loan paid through the plan and then having the plan payments increase when the loan is paid off. Thus, the court finds that the plan was filed in good faith.

As to the Trustee's first and second objection, the Order Confirming the plan can add the provisions that provides for any tax refunds to be paid into the plan as well as giving the specifics of when the 401(k) loan will be paid off and by how much the plan payments will step up.

As to the Creditor's objection concerning the Debtors' income, a review of Schedule I and the attached pay stubs does not show any potential fraudulent activity in trying to deceive the court. The Debtors reply concerning the hourly nature of the Debtors' income and how it does fluctuate is evidenced by the attached pay stubs. The Trustee appears to agree with the court's conclusion on this matter, stating that the amended Schedule I does in fact reflect the Debtor's income. Therefore, the Creditor's objection is overruled.

Therefore, with all the objections being addressed, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a), following the amendments to the plan discussed supra, 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 26, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, with the amendment stating when the 401(k) loan is paid and that upon the 401(k) loan the monthly plan payments shall be increased by $559.00 commencing with the first month after the 401(k) loan is paid in full and continuing through the end of the 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. 14-27618-E-13 MAS-2 | JERRY WADLEY AND TRACY URBANO-WADLEY | CONTINUED MOTION TO DISMISS CASE
Eric Schwab | 10-28-14 [31]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2)

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)(2) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 28, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The hearing on the Motion to Dismiss is denied without prejudice.

Jerry Wadley and Tracy Suzanne Urbano-Wadley commenced the current bankruptcy case on July 25, 2014. By Order filed on October 3, 2014, the court denied confirmation of the proposed Chapter 13 Plan in this case. Dckt. 30. Donna M. Christin ("Christin") a creditor filed an objection to confirmation,

which the court sustained. The court found that the Debtors making new monthly contributions of $459.00 and paying an additional $559.00 into their 401k plans to repay pre-petition loans precluded confirmation of the proposed plan. Civil Minutes, Dckt. 28.

On October 28, 2014, a month after denial of confirmation, Christin filed the present motion to dismiss the current Chapter 13 Case. The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested dismissal of the case is based.

A. Christin is a judgment creditor of the Debtors, having obtained two small claims judgments prior to the commencement of this case.

B. Christin's claim in this case is approximately $17,000.00 and represents more than half of the debt scheduled by Debtors.

C. Though confirmation of the Original Plan was denied on September 30, 2014, no amended plan and motion to confirm were filed as of the October 28, 2014 filing of this Motion to Dismiss.

D. Christin is 80 years old and seeks to enforce the two small claims judgments.

Motion, Dckt. 31. Christin's counsel, not Christin, provides his declaration in support of the Motion. Dckt. 33. Counsel's testimony consists of recounting of the objection to confirmation and the court sustaining the objection. Counsel also testifies that his client is 80 years old and has received no payments on the judgment. Counsel shows no basis for having personal knowledge of these two facts testified to by him. Finally, counsel provides his legal conclusion that further delay is "extremely prejudicial" to Christin. No facts are provided as to what prejudice exists for the enforcement of a $17,000.00 claim. (It is common for a person who asserts that delay itself is actionable prejudice to provide testimony as to the negative financial impact on the creditor. None has been provided in support of the Motion.)

RESPONSE OF DEBTORS

The Debtors have not provided any evidence in opposition to the Motion, but merely have directed their attorney to file arguments in response. Dckt. 35. In the Response counsel for Debtors argues that since the denial of confirmation the Debtors have requested that their voluntary 401k monthly contribution be discontinued. Though no evidence is provided, it is argued that the first paycheck without the 401k contribution was for October 31, 2014.

Counsel for Debtors further argues that one of the Debtors' parents passed away (on an unstated date), thereby distracting the Debtors from addressing the court's denial of confirmation. However, the Debtors will filed an amended plan and have the motion set for hearing on January 13, 2015. (Which appears to be the first available date on the court's calendar that a proper 42 day noticed motion to confirm can be set for hearing.)

NOVEMBER 18, 2014 HEARING

At the November 18, 2014 hearing, the court conditionally granted the Motion and ruled that the case will be dismissed without further hearing if the Debtors have not filed and served an amended plan on or before November 30, 2014.

DISCUSSION

The Debtors filed an amended plan on November 26, 2014. Dckt. 44. The court confirmed the amended plan on January 13, 2015. The Debtors' amended plan addresses the concerns in the Motion to Dismiss. With no grounds remaining to dismiss the case, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by Donna Christin, a 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 without prejudice.

15. 11-24420-E-13 FRANK SCHRODEK AND JOANNE DE LA TORRE
PGM-7 Peter Macaluso

MOTION TO MODIFY PLAN
11-14-14 [145]

Final Ruling: No appearance at the January 13, 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 November 14, 2014. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

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

The 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 November 14, 2014 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.

16. 13-24322-E-13 ALEX LICHINE **MOTION TO MODIFY PLAN**
HLG-2 Kristy Hernandez **11-14-14 [50]**

Final Ruling: No appearance at the January 13, 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 14, 2014. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

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

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

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 November 14, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. 14-27422-E-13 ALP-1 — LONNIE/SHARON SHURTLEFF — C. Anthony Hughes — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A. 8-29-14 [32]

No 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 - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 29, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Motion to Confirm is xxxxxx.

JPMorgan Chase Bank, N.A. (“Creditor”) opposes confirmation of the Plan on the basis that Lonnie and Sharon Shurtleff’s (“Debtors”) Plan is proposed based on the assumption that Creditor’s lien will be avoided if the Debtor’s motion to value is granted. Dckt. 18. Creditor has filed its opposition to the motion to value independently. Dckt. 37. If the Debtors’ Motion to Value is denied, Debtors will be unable to comply with the terms of their Plan, making the Plan infeasible.

NOVEMBER 4, 2014 HEARING

At the November 4, 2014 hearing, the parties agreed to continue the Objection to Confirmation to 3:00 p.m. on December 9, 2014, to be heard in conjunction with the Motion to Value.

DECEMBER 9, 2014 HEARING

At the December 9, 2014 hearing, the motion was continued to be heard in conjunction with the Motion to Value.

JANUARY 13, 2015 HEARING

Though the parties have been working on the issue concerning the value of the Creditor’s secured claim since September 2014, no further pleadings have been filed documenting either a resolution of the objection or that an evidentiary hearing will be required on the Debtors’ Motion to Value Creditor’s secured claim (DCN:CAH-1, Dckt. 18). The Motion to Value was filed on August 15, 2014 and has been continued multiple times by the court at the request of the parties.

18. 14-27422-E-13 LONNIE/SHARON SHURTLEFF
CAH-1 C. Anthony Hughes

CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
8-15-14 [18]

No Tentative Ruling: The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on JPMorgan Chase Bank, N.A., Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is xxxxxxx.

The Motion to Value filed by Lonnie and Sharon Shurtleff ("Debtors") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor").

MOTION

The Debtors' motion is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 308 Savoy Avenue, Rio Linda, California ("Property"). Debtor seeks to value the Property at a fair market value of $175,000.00 as of the petition filing date. As the owners, Debtors' 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.

OPPOSITION

Creditor has filed an opposition on September 2, 2014. Creditor objects to both the Debtors' valuation of the Property and the balance of the first deed of trust on the Property. Creditor alleges that the balance of the first deed of trust is $214,000.00 and the value of the Property is approximately $233,000.00. Dckt. 37. Creditor states that it is in the process of getting a valuation of the Property in support of this allegation.

SEPTEMBER 16, 2014 HEARING

The hearing for this motion was set for September 16, 2014. The hearing was continued to September 30, 2014 to allow the Creditor and Debtor to come to a settlement or stipulation regarding the value of the Property central to the instant motion. A review of the docket shows that no supplemental documents, stipulations, or claims have been filed in relation to this motion.

The hearing was continued to 3:00 p.m. on October 7, 2014 due to technical difficulties with the court call service at the September 30, 2014 hearing.

CREDITOR'S SUPPLEMENTAL FILING

Creditor filed a notice of filing appraisal in opposition to the instant motion on September 30, 2014. Dckt. 45. Attached to the notice was a Residential Appraisal Report performed by Linda Molinari of Prestige Appraisal Service, Inc. The thorough report gave the opinion of value of the Property at $225,000.00. Dckt. 46.

OCTOBER 7, 2014 HEARING

At the October 7, 2014 hearing, the court continued the hearing to 3:00 p.m. on November 4, 2014 to allow both Debtors and Creditor to continue conducting additional informal discovery. Dckt. 69.

NOVEMBER 4, 2014 HEARING

At the November 4, 2014 hearing, the parties agreed to continue the Motion to 3:00 on December 9, 2014 to continue informal discovery of the parties claims.

DECEMBER 9, 2014 HEARING

At the December 9, 2014 hearing, the motion was continued to 3:00 p.m. on January 13, 2015.

JANUARY 13, 2015 HEARING

19. 14-30723-E-13 NICOLE FUEHRER
DPC-1 Shareen Golbahar

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE
12-17-14 [23]

IF COUNSEL FOR THE DEBTOR ELECTS TO NOT APPEAR AT THE JANUARY 13, 2015 HEARING THE OBJECTION TO CONFIRMATION WILL BE CONTINUED

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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on January 27, 2015.

Trustee opposes confirmation of the Plan on the basis that the First Meeting of Creditors had to be rescheduled. The Trustee states that due to inclement weather conditions, the First Meeting of Creditors scheduled for

December 11, 2014 was not held and has been continued to January 8, 2015 at 10:30 a.m. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.

The Trustee requests that the court continue the hearing on the objection to January 27, 2015.

To allow the Trustee the opportunity conduct the First Meeting of Creditors, the court continues the instant Objection to Confirmation to 3:00 p.m. on January 27, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is continued to 3:00 p.m. on January 27, 2015.

20. 13-25926-E-13 GLENN/JACKIE LOWERY
DAO-4 Dale A. Orthner

MOTION TO SUBSTITUTE IN JOINT DEBTOR
12-2-14 [100]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 2, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Substitute 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 Substitute is granted.

Joint Debtor, Jackie Lowery, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Glenn Lowery. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtors filed for relief under Chapter 13 on April 30, 2013. On November 22, 2013, the debtor's First Modified Chapter 13 Plan was confirmed. On April 1, 2014, the debtor passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on December 2, 2014. Dckt. No 103. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 BR. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id*.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 BR. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that

> the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also, *Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Ms. Lowery has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. No 103. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Jackie Lowery, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Glenn Lowery. The court grants the Motion to Substitute Party.

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 Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Jackie Lowery is substituted as the successor-in-interest to Glenn Lowery and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

21. 13-25926-E-13 GLENN/JACKIE LOWERY MOTION TO MODIFY PLAN
DAO-5 Dale Orthner 12-2-14 [105]

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 December 2, 2014. 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 continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on February 24, 2015.

Flenn and Jakie Lowery ("Debtors") filed the instant Motion to Confirm the Modified Plan on December 2, 2014. Dckt. 105.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 6, 2015. Dckt. 117. AN.1.

AN.1. The court notes that the Trustee originally filed an Objection on December 18, 2014 but filed an amended Objection on January 6, 2015. The court will only review the amended Objection as the Trustee indicated that it incorporates the remaining objections from the original Objection.

The Trustee objects on the following grounds:

1. Debtors filed Amended Schedules I and J on December 22, 2014 (Dckt. 116) which support the proposed plan payment of $1,640.66. The adjustments to expenses are normal reductions in expense and appear largely due to Debtor's change in circumstances where Debtor Glann Lowery, Jr. is deceased.

The Trustee's only concern regarding Debtor's Amended Schedules relates to the inclusion of an additional house and trailer at the 5850 Yankee Jims Road property. Debtor's prior Schedule I and J (Dckt. 1) included rental income from one trailer on the property and second home, and expenses involving water, garbage and maintenance for each. Debtor's Amended Schedule I states the second trailer and third house were previously occupied by family, but does not provide any additional information regarding these structures and why they were not previously disclosed.

2. The Trustee is uncertain of the plan payment proposed. Debtor's proposed modified plan does not state what the plan payments are for months 1 through 19, or provide a total paid in over that period. The plan proposes a plan payment of $1,640.66 for the remaining 41 months of the 60 month plan. The Trustee's records reflect that through November that Debtor paid a total of $25,336.92. The Trustee would have no opposition if this were corrected in the order confirming.

3. Section 2.06 of Debtor's modified plan indicates the attorney of record was paid $1,500.00 prior to the filing of the case with $0.00 additional fees paid through the plan. Under the confirmed plan attorney's fees are $1,500.00 paid prior with $2,000.00 paid through the plan. The Trustee has disbursed $2,000.00 in attorney's fees. The Trustee is uncertain whether Debtor's counsel is now proposing to modify the plan to receive $0.00 in attorney's fees through the plan, where $2,000.00 has been paid. This also could be addressed in the order confirming.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objection on January 6, 2015. Dckt. 122. The Debtors respond as follows:

1. The Debtors have filed the amended Schedules I and J.

2. As for the plan payment, it is not clear what information Trustee requests. The calculations to fully pay off the previously omitted priority amount, over the remaining 41 months of the plan, are set forth clearly in paragraph 6 and 7 of the Motion. Debtors are happy to clarify any ambiguities in the Order Confirming First Amended Plan.

3. Debtors' attorney does not intend to receive any further fees through the First Modified Plan, and has been paid the $2,000.00 indicated by Trustee. Debtors are happy to clarify any ambiguities in the Order Confirming First Modified Plan.

DISCUSSION

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

The Trustee's objections are well-taken. Possibly they can be addressed in the Order Confirming. The Order Confirming can correct the issue

concerning the plan payments between months 1 through 19 and the discrepancy concerning the attorneys fees.

Beginning with the Proposed First Modified Plan, it states that the Plan term is for "41 more months." Dckt. 106. While someone reading all of the other pleadings in the file could piece together what "number of months" that the 41 is to be more than, but the Plan needs to stand on its own. It is not a composite of various documents and pleadings strew through 123 documents already filed in this case.

The Confirmed First Plan in this case provides that the Debtor has funded the Plan with payments of $5,908.86 as of October 25, 2013, and is to make monthly payments of $1,494.62 for the balance of the Plan. Order Confirming, Dckt. 88. The Confirmed First Amended Plan provides for plan payments for 60 months. Dckt. 50.

The First Modified Plan appears to provide that the monthly plan payments will be $1,640.66 a month, for all months prior to confirmation and for 41 additional months.

The court anticipates that the Debtor, Debtor's Counsel, and the Trustee can resolve the Trustee's questions. However, such resolution and the plan should be documented in a final, unified, Chapter 13 Plan. To facilitate this process the court does not want the Debtor to file a new proposed second modified plan and start the confirmation process all over. The parties would be better served by the Debtor filing a Supplemental Exhibit which shall be the proposed Second Modified Plan in which all of the corrections and amendments are stated resolving the Trustee's concerns and clearly stating (1) the term of the Plan and (2) how much the Debtor is to pay under the plan (identifying the amount paid into to the plan to a date certain and the additional monthly amounts and number of months they are to be paid.

The modifications are sufficiently substantial that the court does not want to spread them over a Chapter 13 Plan and the order confirming. Additionally, the court had to provide for such amendments in the order confirming the First Amended Plan in this case and such omissions should not have been repeated in this case.

On or before January 22, 2015, the Debtor shall file and serve the Supplemental Exhibit consisting of the draft proposed Second Modified Chapter 13 Plan which states all of the proposed amendments and Notice of Continued Hearing advising parties in interest of the hearing date and following deadlines. On or before January 30, 2015, objections to the proposed draft Second Modified Plan shall be filed and served, and on or before February 6, 2015, Reply, if any, to oppositions shall be filed.

The hearing on the Motion is continued to 3:00 p.m. on February 24, 2015.

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

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

The Motion 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 Hearing on the Motion is continued to 3:00 p.m. on February 24, 2015.

IT IS FURTHER ORDERED that on or before January 22, 2015, the Debtor shall file and serve the Supplemental Exhibit consisting of the draft proposed Second Modified Chapter 13 Plan which states all of the proposed amendments and a Notice of Continued Hearing advising parties in interest of the hearing date and following deadlines. On or before January 30, 2015, objections to the proposed draft Second Modified Plan shall be filed and served, and on or before February 6, 2015, Reply, if any, to oppositions shall be filed.

22. 14-22527-E-13 MARK/PATRICIA HARLAND MOTION TO CONFIRM PLAN
JMC-2 Joseph Canning 11-19-14 [42]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. 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.

Mark and Patricia Harland filed the instant Motion to Confirm the Amended Plan on November 19, 2014. Dckt. 42.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an Opposition to the instant Motion on December 23, 2014. Dckt. 53. The Trustee objects on the following grounds:

1. Plan relies on Motion to Value not yet filed. The Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtors propose to value the secured claim of Real Time Resolutions, but have not re-filed their motion, since the denial of their previous motion on July 1, 2014. Dckt. 37. Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

2. The attorney fees charged in the proposed amended plan total $5,000.00, which conflict with the prior plan (Dckt. 13) which totaled $4,000.00 and the rights and Responsibilities filed on March 13, 2014 (dckt. 7) and Debtors' Disclosure of Attorney Compensation (Dckt. 29), both which also reflect attorney fees total $4,000.00. The Trustee is unable to determine what fees should be paid.

3. It appears that the Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtors' projected disposable monthly income listed on Schedule J is $135.00 and the Debtors propose a plan payment of $150.00.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's Objection on January 6, 2015. Dckt. 61. The Debtors reply in order of the Trustee's objections as such:

1. Debtors will be filing a Motion to Value hereafter.

2. Debtors will be filing a Disclosure of Compensation of Attorney for Debtors – Amended and an Amended rights and Responsibilities of Chapter 13 Debtors and Their Attorneys hereafter.

3. Debtors will be filing a Supplemental Declaration and Exhibits hereafter.

DISCUSSION

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

The Trustee's objections are well-taken. While the Debtors have filed an amended Disclosure of Compensation of Attorney for Debtors and Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, the Debtors have not filed Supplemental Schedules nor the Motion to Value necessary for their proposed Plan to be feasible.

The Debtors did attach a copy of their updated income and expenses but have not filed a formal amendment to their schedules. Without the Debtors' schedules actually being supplemented on the record, outside of the attached exhibits to a supplemental declaration, the court must look at the actual schedules provided for in the case which shows that the Debtors do not have sufficient income to make payments under the proposed Plan.

Furthermore, even though the Debtors state that a Motion to Value is forthcoming, there is no such Motion on the docket. Without the Real Time Resolutions secured claim being valued, the Plan is not feasible.

Therefore, 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.

23. 14-22528-E-13 GW-1 ERNST/KATHARINE GARTNER Gerald L. White

MOTION FOR COMPENSATION BY THE LAW OFFICE OF GERALD L. WHITE FOR GERALD L. WHITE, DEBTORS' ATTORNEY
12-1-14 [21]

Final Ruling: No appearance at the January 13, 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, parties requesting special notice, and Office of the United States Trustee on December 1, 2014. By the court's calculation, 43 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 and xxxxxxxxxxxxxxxx.

Gerald White, the Attorney ("Applicant") for Ernst and Katharine Gartner, the Chapter 13 Debtors ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period February 12, 2014 through August 12, 2014. Applicant requests fees in the amount of $6,240.00 and costs in the amount of $281.00.

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.

DISCUSSION

While the Motion states the total amount of fees requested, it does not provide a task billing analysis (or summary). The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

While not stated or referenced in the Motion, Exhibit D is a task billing analysis. Dckt. 25 at 9-11. This exhibit is authenticated by Counsel in his declaration, which also includes a narrative discussion of the task billing. The task billing analysis for the legal services as stated by Counsel is:

> A. Preparation of Petition, Schedules, Plan.....13.25 hrs (Pre and Post-Petition)
>
> B. Review of Claims..... 2.10 hrs
>
> C. Confirmation of Plan..... 3.35 hrs
>
> D. Case Management..... 2.10 hrs

Declaration pg. 2:10-23; Exhibit D pgs. 9-11, Dckt. 25.

The Attorneys' Fees requested total $6,240.00. In addition, Counsel has advanced the $281.00 filing fee. Debtor paid, and counsel is holding in his Client Trust Account $3,000.00 paid pre-petition as the retainer for the services to be provided. Counsel's hourly rate billed for the services is $300.00.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided in light of the complexity of the case and issues to be addressed by counsel. First Interim Fees in the amount of $6,240.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 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.

The court also allows the expense of $281.00, which is for the filing fee.

Applicant is allowed, Applicant is authorized to first pay the allowed fees from the $3,000.00 retainer, and the Trustee is authorized to p the remaining unpaid amount, the following amounts as compensation to this professional in this case:

Fees	$6,240.00
Costs	$ 281.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 33 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 Gerald L. White(Applicant"), Attorney for the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald L. White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald L. White, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $6,240.00
>
> Costs of $281.00,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Applicant is authorized to first apply the $3,000.00 pre-petition retainer to the

allowed fees, and the Chapter 13 Trustee is authorized to pay the remaining balance, $3,521.00, through the Chapter 13 Plan.

24. 11-29034-E-13 DOUGLAS/ELIZABETH EDWARDS
PGM-7 Peter Macaluso
MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
12-15-14 [137]

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, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 30 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.

Peter Macaluso, the Attorney ("Applicant") for Douglas and Elizabeth Edwards, the Chapter 13 debtors ("Client"), makes an Application for Additional Attorney Fees in this case.

The period for which the fees are requested is for the period May 5, 2011 through November 15, 2012. Applicant requests fees in the amount of $3,680.00.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 23, 2014. Dckt. 142. The Trustee objects on the following grounds:

1. Fees for most of the period have already been awarded. Debtor obtained confirmation of a plan and an order awarding attorney fees on November 28, 2013. Dckt. 135. Only $675.00 (3.5 hours) of the total fees of $2,000.00 sought is for work done after that period. Debtors' counsel seeks to amend the prior order which provided, "IT IS FURTHER ORDERED that attorney's fees for the debtor's attorney in the full amount $3,500.00 are approved, $1,000.00 which was paid prior to the filing of the petition." Dckt. 135, pg. 2, lines 3-5. Debtors' counsel has not given any explanation why, after 24 months, the court should re-examine the order for the work done prior to that period.

2. While the court may consider awarding attorney fees to Debtors' counsel under 11 U.S.C. § 330(a)(4)(B), the compensation must be reasonable based on a consideration of the benefit and necessity of such services to the Debtor.

Debtors' counsel does not adequately explain why he was unable to obtain confirmation until the Sixth Amended Plan (Dckt. 134), which was confirmed on November 28, 2012 (dckt. 135) some 19 months after filing.

The Trustee asks tha the court only approve the $670.00 of the fees requested for post confirmation services.

APPLICANT'S REPLY

The Applicant filed a reply to the Trustee's objection on January 6, 2014. Dckt. 145. The Applicant responds as follows:

1. The Trustee is correct that the work performed and the fees requested, are for work done some time ago. The Debtors' Motion to Confirm was initiated by the Motion to Dismiss, which was compounded into an evidentiary hearing that was unanticipated and substantial. Additionally, there was a motion for relief from stay. The 18.40 hours are actual, reasonable, necessary, and unanticipated.

2. While the filing of the application was delayed, no prejudice to what the creditors anticipate receiving was caused, and the approval of the fees sought do not alter the treatment of creditors.

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.

"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)."

DISCUSSION

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 135. Applicant prepared the order confirming the Plan. At the time the Plan was confirmed, November 28, 2012, Applicant was fully aware of the legal services provided. He elected to be allowed the "no-look" fees.

Applicant could have elected not to take the no-look fees and sought the approval of fees pursuant to 11 U.S.C. §§ 331 and 330. He did not so choose.

Additional Fees When No Look Fee Is Chosen By Counsel

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.

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.

Motion for Relief from Automatic Stay and Adequate Protection: Applicant spent 2.05 hours in this category. Applicant suggests that defending this Motion was unanticipated as the Debtors became delinquent on vehicle lease payments.

Motion to Confirm (PGM-3): Applicant spent 4.45 hours in this category. Applicant suggest that this Motion was unanticipated as the intial Motion to Confirm was denied after multiple objections to confirmation.

Motion to Dismiss (TSB-1) and Motion to Confirm (PGM-4): Applicant spent 4.05 hours in this category. Applicant suggests this Motion to Confirm was unanticpated as the Trustee filed a Motion to Dismiss Case.

Motion to Confirm (PGM-5): Applicant spent 2.05 hours in this category. Applicant suggests this Motion to Confirm was unanticipated, as the privious Motion to Confirm was denied.

Motion to Confirm (PGM-6): Applicant spent 2.05 hours in this category. Applicant suggests this Motion to Confirm was unanticipated as the previous Motion to Confirm was denied.

The Applicant also provided a break-down of pre- and post-confirmation charges as such:

Total of Pre-Confirmation Charges	36.40	$7,280.00
Total of all Post-Confirmation Charges	3.35	$670.00
TOTAL AMOUNT	46.50	$7,950.00

Applicant seeks to be paid a single sum of $2,000.00 for its fees incurred for the Client.

DISCUSSION

Applicant’s declaration admits that the decision to accept the set fee was improvident because the prosecution of the case within the scope of the set fee was more complicated than he projected at the start of the case. Such is not an exception to, or grounds to breach, the set fee agreement. Every consumer attorney could assert this as a grounds to ignore the agreed set fees when he or she spends more time than projected. However, in cases when the set fee works to be a bonus (Applicant spending less time than equal to the set fee), Applicant does not state that the rules require him to give the extra amount back. The set fee exists to allow Applicant to elect to accept such fees, taking the bonus in some cases and spending more time in other cases – but in the end the over and under amounts balance out.

As the Trustee’s objection points out, the Applicant does not provide specific information to raise to the level of “substantial and unanticipated” particularly in light of the fact that Applicant is seeking fees for pre-confirmation services. Merely using the buzz words does not create the

justification to grant fees when the services were rendered prior to the confirmation, particularly when Applicant prepared the order confirming which explicitly stated that the Debtors' attorney will receive attorney's fees in the full amount of $3,500.00.

Before the court can consider awarding additional fees for those which are included in the no-look fees elected by Applicant, the order allowing no-look fees must be vacated. To do that, Applicant will have to seek relief pu8rsuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024. Vacating the prior order is not guaranteed upon filing and sufficient grounds must be shown.

While the court is sympathetic to attorneys and their need to be fairly compensated, such does not warrant the ignoring of prior order and the Local Bankruptcy Rules. This judge noted that when he was first appointed some of the consumer attorneys attempted to treat the no-look fee as a "no lose" minimum payment. If it worked out to be in excess of the time expended, they would "pocket the bonus." However, if they spent more time then they believed the fees provided for, then they would just seek additional fees. This "interpretation" of the Local Bankruptcy Rules turned the no-look fee on its head and became a vehicle for attorneys being more than the value of their services. FN.1.

FN.1. The court notes that the Applicant is not one of those attorneys and has, in the past, lived with his no-look elections.

The cost and expense of seeking to vacate the prior order is a consequence of Applicant electing to take the no-look fee.

Therefore, the court denies Applicant's request to convert his set fee agreement into a hourly agreement for all services. The Motion is denied without prejudice, as Applicant may elect to seek to vacate the prior order or identify substantial and necessary legal services for which additional fees may be granted in addition to the no-look fees.

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 Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

25. 14-30035-E-13 GUSTAVO DIAZ-ISLAS
DPC-1 Chaland B. Scrivner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-24-14 [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 Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 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.

Trustee opposes confirmation of the Plan on the basis that:

1. The Debtor's Plan proposes to pay $1,400.00 for 8 months and the Debtor will sell the R.E. Lots in Jalisco, Mexico and pay proceeds estimating $62,000.00 plus pay plan in full within 8 months. The Debtor has failed to provide any specific information as to the sale of the property. The Debtor describes the properties on Schedule A as "Undeveloped Land" with values of $150,000.00 for #2 and $50,000.00 for #1. The plan lacks specificity as to the

sale of the real property. The plan fails to provide a monthly dividend to pay the Class 1 pre-petition mortgage arrears for 8 months, until the sale occurs.

2. The Debtor lists Portfolio Home Loan on Schedule D, however the Debtor fails to provide for this debt in the Plan. Schedule D states “Too much text for this space to hold” “Notice only” and while the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

3. Debtor cannot make payments. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor has failed to list an expense for income taxes on Schedule J.

4. This case is the Debtor’s fifth bankruptcy filing within the past three years. The Debtor has not given sufficient evidence to show they will have the ability to make the plan payments and complete the plan where they have had four recent prior bankruptcies where were unsuccessful, 11 U.S.C. § 1325(a)(6).

The Debtor has filed the following prior cases:

Chapter 7 Case #11-33790 filed on June 1, 2011 and the Debtor received a discharge on September 19, 2011.

Case #12-20013-13 filed on January 2, 2012 and the case was dismissed on March 21, 2012 for delinquency, no business documents produced, and no motion to confirm filed.

Case #12-28786-13 filed on May 6, 2012 and the case was dismissed on June 4, 2012 for no documents filed.

5. The Debtor’s prior Case (Case No. 12-31661-13) filed on June 21, 2012 fails to list the 2 Real Estate Lots in Jalisco, Mexico on Schedule A (Dckt. 10, pg. 1). The Debtor has failed to explain why these lots were not originally listed on his schedules and when they were purchased.

The Debtor’s prior case (Case No. 13-31661-13) listed Lighthouse Mortgage’s second deed of trust on Schedule D (Dckt. 10, pg. 6) however the Debtor has failed to list this debt in his current Chapter 13 cse.

DISCUSSION

The Trustee’s objections are well-taken. A review of the instant case as well as the Debtor’s prior cases raises many questions concerning the Debtor’s candidness in the instant case and whether the Debtor can, in fact, make the proposed Plan payments.

The proposed Plan seems to, in part, rely on the proposed sale of the land in Mexico. However, as the Trustee points out, there is little to no information as to the means the Debtor intends to execute the sale. When the plan is dependent on the sale of real property, the Debtor must provide more information than just mere cursory description.

The concern over certain items being omitted in the instant case that were present in the prior cases, namely the Lighthouse Mortgage, again brings the plan's feasibility into question. The omission without an explanation once again raises concerns over the Debtor's candidness with the court.

Additionally, notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This, in conjunction with the Debtor being a repeat filer, this is reason to sustain the objection.

AMENDED PLAN FILED

On January 6, 2015, the Debtor filed an Amended Chapter 13 Plan (Dckt. 37), which is a de facto withdrawal of the prior plan. No motion to confirm the amended plan has yet been filed. L.B.R. 3015-1(d). The First Amended Plan provides for monthly plan payments of $1,400.00, plus within eight months the Debtor is to generate monies from the sale of lots in Mexico. For the Class 1 and Class 2 claims, no distributions are made through the plan from the $1,400.00 a month payments. No payments are to be made to Debtor's counsel through the Plan. No motion to value has been filed for the Lighthouse Mortgage claim.

For the Class 2 Claim of Lighthouse Mortgage is to be paid $0.00. Lighthouse Mortgage is not listed as a creditor having a claim on Schedule D. On Amended Schedule D the Debtor states that Lighthouse Mortgage has a 2nd Mortgage, but doesn't identify the collateral. Dckt. 36. It appears that the Class 7 general unsecured claims provided for in the Amended Chapter 13 Plan is for the Lighthouse Mortgage claim. The Amended Plan provides for a 10% dividend, which would total $7,300.00. However, the Debtor has scheduled real property in Mexico having a value of $200,000.00. Schedule A, Dckt. 14 at 1. Debtor has claimed an exemption of $22,000.00 in one of the Mexico Properties. Amended Schedule C, Dckt. 36 at 5. Assuming 10% for costs of sale, currency conversion, and other transactional costs, there appears to be $158,000.00 of value in the Mexico Properties to pay creditor claims. The value in these Mexico Properties (which were not disclosed in the prior bankruptcy cases) does not appear to be provided for in the First Amended Plan.

OBJECTION TO CONFIRMATION SUSTAINED

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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.

26. 14-30035-E-13 DPC-2 | **GUSTAVO DIAZ-ISLAS** | **Chaland B. Scrivner** | **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS** | **11-24-14 [30]**

Final Ruling: No appearance at the January 13, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of Trustee's Objection to Exemptions, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Debtor's Claim of Exemptions was dismissed without prejudice, and the matter is removed from the calendar.**

27. 14-30135-E-13 JULIE COLLIS-DAVIS **MOTION TO VALUE COLLATERAL OF**
DEF-1 David Foyil **FIRST HORIZON**
12-2-14 [31]

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).

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, parties requesting special notice, and Office of the United States Trustee on December 2, 2014. By the court's calculation, 42 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 First Horizon ("Creditor") is denied without prejudice

The Motion to Value filed by Julie Davis ("Debtor") to value the secured claim of First Horizon ("Creditor") is accompanied by Debtor's declaration.

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. Debtor owns that certain property commonly described as 8225 Greenland Court, Citrus Heights, California.

B. The value of the above-noted asset is $250,000.00. The value is based upon the opinion of Julie Davis.

C. A senior lien in favor of Nationstar Mortgage in the amount of $265,047.43 presently encumbers the asset. Thus, there is no equity in the property to secure any part of the subject loan.

D. The debtor's indebtedness to First Horizon, the second deed of trust, is $60,028.00.

E. Debtor incorporates by reference the Chapter 13 Plan previously filed.

F. Debtor hereby incorporates by reference the legal description filed concurrently.

The present Motion provides the most minimilistic pleading possible for a motion to value a secured claim of a creditor. But it does (1) identify the property, (2) assert a value of the property, (3) allege the amount of the debt secured by the senior lien, (4) identify the creditor holding the junior lien, and (5) state the amount of the claim asserted by the creditor holding the junior lien. Missing from the Motion is a prayer which requests specific relief. See Fed. R. Bankr. P. 9013, both the grounds upon which the motion is based and the relief requested must be stated with specificity. The Motion does state in the introductory paragraph that Debtor requests that the claim of Creditor "be allowed as an unsecured claim pursuant to 11 U.S.C. § 506." The court does not allow or disallow claims pursuant to 11 U.S.C. § 506(a), but determines what portion of an allowed claim is secured. The court reads this request for a determination that the secured claim has a value of $0.00 and the balance of the claim (which in this case would be 100%) be an unsecured claim for purposes of the Plan in this case.

IDENTITY OF CREDITOR

On Schedule D the Debtor lists First Horizon as a creditor having a claim secured by a second deed of trust against the Greenland Ct. property. Schedule D, Dckt. 1 at 11. The amount listed on Schedule D for the claim is $60,028.00. The Motion seeks to value the claim of First Horizon.

However, on October 24, 2014, Proof of Claim No. 3 was filed by First Tennessee Bank National Association ("FTBNA"). FTBNA asserts a secured claim in the amount of $61,676.27, which is secured by a deed of trust recorded against the Greenland Ct. Property. The Note attached to Proof of Claim states that the lender who made the loan secured by the deed of trust was "First Horizon Home Loan Corporation." This may, or may not, be the same entity which is stated in the Motion to be "First Horizon." FN.1.

FN.1. The California Secretary of State lists six corporations with the words "First Horizon" in their names. http://kepler.sos.ca.gov/.

Attached to Proof of Claim No. 3 is a letter from the Comptroller of the Currency, Administrator of National Banks which states that First Horizon National Corporation, FT Mortgage Holding Corporation, and First Horizon Home Loan Corporation into FTBNA. Proof of Claim 3, pg. 17. This letter is dated May 30, 2007.

It appears that it is FTBNA which asserts to have the claim in this case secured by the second deed of trust. The Motion does not seek to value the secured claim of FTBNA, but some entity named "First Horizon." The court cannot identify who is "First Horizon" or that "First Horizon" has a claim to be valued in this case.

The creditor not being adequately identified so that the court has any confidence as to the entity whose rights are being altered and the Motion seeking relief from an entity other than the one which has filed Proof of Claim No. 3 in this case, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Julie Davis ("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.

28. 14-31539-E-13 LARRY LAACKMANN
RAC-1 Richard Chan

MOTION TO VALUE COLLATERAL OF ONEWEST BANK, N.A.
12-9-14 [14]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of OneWest 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 Larry Laackmann ("Debtor") to value the secured claim of OneWest Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2775 Olive Ct, West Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $298,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent**

> **of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $369,016.00. Creditor's second deed of trust secures a claim with a balance of approximately $38,749.00. 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 Larry Laackmann ("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 OneWest Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 2775 Olive Ct., West Sacramento, 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 $298,000.00 and is encumbered by senior liens securing claims in the amount of $369,016.00, which exceed the value of the Property which is subject to Creditor's lien.

29. 10-37141-E-13 SLH-2 ANDRE/CONNIE SIMPSON Seth Hanson

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 12-2-14 [33]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 2, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo 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 Andre and Connie Simpson ("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 4791 Antelope Circle, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $276,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority deeds of trust secures a claim with a balance of approximately $376,988.00. Creditor's third deed of trust secures a claim with a balance of approximately $10,425.32. 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 Andre and Connie Simpson ("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 third in priority deed of trust recorded against the real property commonly known as 4791 Antelope Circle, Fairfield, 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 $276,000.00 and is encumbered by senior liens securing claims in the amount of $376,988.00, which exceed the value of the Property which is subject to Creditor's lien.

30. 14-21142-E-13 LBG-4 THOMAS LISLE AND BARBARA TREAT Lucas Garcia — MOTION TO MODIFY PLAN 11-14-14 [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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2014. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Thomas Lisle and Barbara Treat ("Debtors") filed the instant Motion to Confirm the Modified Plan on November 14, 2014. Dckt. 79.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 18, 2014. Dckt. 89. The Trustee objects on the following grounds:

1. According to the Trustee's calculations the Plan will complete in more than the 60 months proposed, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtors' modified plan proposes to pay in $60,457.98 at 100% to unsecured creditors, but Debtors' unsecured creditors alone total $155,277.05. This appears to be due to Debtors' unsecured creditors including Debtors' second deed of trust, which has been valued, Debtors' modified plan proposes to reclassify this claim to Class 3 surrender, but the

order valuing has not been vacated so the creditor is entitled to an unsecured claim under 11 U.S.C. § 506(a)(1).

2. Section 2.06 of Debtor's proposed modified plan increases attorney's fees from $4,476.64 under the confirmed plan to $8,000.00. No language regarding additional attorney's fees is included in the additional provisions and Debtors have not filed a Motion for additional fees. The Trustee has disbursed $4,476.64 in attorney's fees.

3. The proposed plan payment may not be Debtors' best effort. Debtors' modified plan proposes a plan payment of $995.00 for 1 month, $470.00 for 5 months, $0.00 for 2 months, $470.00 for 51 months, $33,142.98 for 1 month with 100% to unsecured creditors. December is month 10 where Debtors' petition was filed February 6, 2014.

Debtors' Motion state in part "the debtor has also achieved a settlement related to a disclosed ongoing state court action which will allow payment to general unsecured creditors." Dckt. 79, pg. 2, lines 6-7. Debtors' Declaration states "However the procedures related to his ongoing injury lawsuit have been accelerated and we have achieved an unexpectedly early settlement. This will result in funds sufficient to pay to the general unsecured creditors. This too was highly unexpected as the case was being delayed repeatedly and we were not expecting this settlement to arrive so soon (and at time we doubted we should prevail)." Dckt. 81, pg. 2, lines 4-9.

Debtors do not disclose any details regarding the settlement such as how much Debtors will be receiving, how it will be paid out, and when. Where Debtors are currently in month 10 of a 60 month plan, and the modified plan proposes a lump payment in the 60th month, which stems from settlement funds potentially received much sooner, the Trustee cannot be certain the plan payment proposed is Debtors' best efforts.

4. Debtor is paid ahead $995.00 under the proposed modified plan. Under the proposed modified plan, Debtors would need to have paid through November (month 9) a total of $3,815.00 ($995.00 x 1, $470.00 x 5, $0.00 x 2, $470.00 x 1). The Debtors have actually paid a total of $4,810.00, a difference of $995.00 which represents just over two payments.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objections on January 6, 2015. Dckt. 92. The Debtors responded in order of the Trustee's objections as such:

1. The Debtors have discussed with attorney and approved taking actions to file a motion to vacate/reconsider the order valuing the Second Deed of Trust based on the changes in the Debtors' circumstances which were unknown to the Debtors at the time of filing, namely the medication condition which subsequently took Mr. Lisles life on December 12, 2014.

2. The Debtors' attorney shall prepare and file any additional motions for fees and submit them to the court. This dollar figure is an estimate based on current and future work to be accomplished to assist in calculation and not a final binding amount.

3. The Debtors request that the Trustee take notice of both the medical condition that existed at the time of his filing and the subsequent consequences of those conditions. The surviving debtor, Denise Treat, is now in a position of not only managing grief but also trying to manage her deceased husband's business and the continued obligation to the court. The Debtors are still proposing a plan that will provide for all claims filed to date (assuming that the motion to vacate is found to be necessary and granted).

On January 6, 2015, Debtors counsel spoke with Mr. Whitney Davis, the personal injury attorney, and he has indicated that he will turn over the funds from the settlement to the court per the directing of Debtor Denise Treat.

DISCUSSION

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

The Trustee's objections are well-taken. While the court is sympathetic to the loss of Debtor Denise Treat's husband, the plan as it currently stands cannot be confirmed.

The surviving Debtor now notes that she must (1) file a motion for the appointment of a personal representative of the deceased Debtor, (2) file a motion to approve any proposed settlement of the state court litigation, (3) motion to vacate or readdress the valuation of a creditor's claim (or proceed with changing the treatment to surrender the collateral), (4) motion for authorization for the employment of such counsel will have to be obtained and then the state court counsel have his or her fees approved by this court (11 U.S.C. §§ 327, 328, 239, and 330). These are all motion that should, and must, precede the present Motion to Confirm the Chapter 13 Plan.

The court is sympathetic and can only imagine the grief with the loss of a spouse, compounded by being in stated court litigation and then this bankruptcy case. But this Debtor is represented by various professionals to make sure that she fulfills her legal obligations and properly enforces her rights. Two include her counsel in this bankruptcy case and her state court counsel. Possibly she is also being represented by a certified public accountant or other accountant who is familiar with the financial and legal obligations running with the pending state court settlement and the Debtor's obligations in this bankruptcy case.

This bankruptcy case was filed on February 6, 2014. Schedule B lists the state court claim and amkes reference to the case number. Dckt. 14 at 5. Thus, at the time of filing the various professionals knew that a state court attorney was being engaged to represent the Debtors as the fiduciary of the bankruptcy estate. They also knew that authorization for employment of such counsel was required – at least if such counsel desired to be paid for his or her services.

On October 10, 2014, Debtor (both) filed a motion seeking to dismiss this bankruptcy case. Dckt. 71. In that motion it was represented that due to health considerations Debtor could not continue to make the payments and sought to dismiss the case. No mention was made of the State Court Litigation and possible recovery thereon. No declaration was provided in support of the motion to dismiss and neither Debtor provided testimony in support of that motion. Possibly the omission of the State Court Litigation and the testimony

was inadvertent, something the Debtor refused to do, or Debtor was instructed not to disclose that information and provide any testimony by her two attorneys to hide that information from the court, Chapter 13 Trustee, Creditors, and other parties in interest.

The Chapter 13 Trustee responded, stating that he was contacted by one of the attorneys for a defendant in the State Court Litigation. That attorney notified the Chapter 13 Trustee that (1) Debtor failed to disclose the existence of the bankruptcy case in the State Court Litigation, (2) Debtor valued their business at a highly greater value ($300,000 to $500,000) in the State Court Litigation than in the bankruptcy schedules (a negative $46,150), (3) other undisclosed financial transactions between Debtor and Debtor's business entity, and (4) while demanding $1,900,000+ in the State Court Litigation, in the bankruptcy schedules Debtor lists the value to be $25,575.00. Dckt. 74. The Exhibits provided by the Chapter 13 Trustee also indicate that a settlement had been reached by the various parties as of October 14, 2014. Exhibit C, Dckt. 76 at 14.

Even though Debtor's professionals knew that there was a settlement, no motion for authorization to enter into the settlement was filed. Rather, Debtor merely filed the present motion – hiding from the court and parties in interest the settlement and Debtor's actual finances.

As discussed in the Minutes from the November 25, 2014 hearing on the Motion to Dismiss, the court elected to deny the motion, not grant it and convert the case to one under Chapter 7. Civil Minutes, Dckt. 86. The events in this case caused the court to question the conduct, and good faith, of Debtor and Debtor's professionals.

> "It appears that the **asset listed on Schedule B as the state court action claim has significant value in excess of $25,000.00.** Debtors have disclosed that there is a **settlement with at least some of the parties, but no settlement has been authorized by this court**. Debtors state that they are represented by counsel in the state court action, but such employment has not been approved by the court. As it now sits, that **state court action counsel is not authorized to receive payment for the services she is providing and is working for free.**
>
> It may well be that these Debtors were, prior to receiving the devastating personal and family medical news, incapable of prosecuting this case and fulfilling the fiduciary duties of Chapter 13 Debtors to the bankruptcy estate. Now these matters may render them incapable of prosecuting the case. **The problems in this bankruptcy case are multiplying, not narrowing down.**
> ...
> At this juncture it may well be **in the best interests of creditors, the estate, and even the Debtors to convert this case to one under Chapter 7** and allow a bankruptcy trustee to administer the assets of the estate, including the effective prosecution of the state court action and maximize the recovery for what is stated to be a surplus bankruptcy estate.

> However, in light of the family and medical issues, the court will not convert the case at this time. But **counsel for the Debtors has a substantial amount of work which must be done in this case, and failure to prosecute the case will result in it being converted** so that a fiduciary can be appointed to protect, prosecute, and recover the substantial value of the assets of this bankruptcy estate."

Civil Minutes, November 25, 2014 Hearing, *Id.* [Emphasis Added] (Though long, the court has quoted the prior minutes as it appears they had little impact on the professionals representing Debtor.)

More than 48 days have passed from the November 25, 2014 hearing and no action has been taken by the Debtor or Debtor's professionals with respect to the settlement. The court recognized the serious issues being addressed by Debtor – but that did not impair Debtor's professionals from getting the motion to approve the settlement filed. That did not impair the ability of Debtor's professionals from filing a motion for authorization to employ counsel for the State Court Litigation.

The attorney's fees listed in the plan have not been requested nor does the plan outline the justification for the $8,000.00 in attorneys fees listed. While the Debtors' reply does state that it is an estimate and not binding, the Plan cannot rely on estimation when determining if the plan is feasible. The proper method of asking for increased fees is to file additional motions for the fee requests.

As to the best efforts objection, the extreme change in condition of the Debtors' financial reality, namely the passing of the co-debtor and the settlement agreement, the plan does not properly reflect the current financial situation and cannot be confirmed.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

31. 14-27944-E-13 NF-1 | **MICHAEL/DANNIELLE CARDENAS Nikki Farms** | **MOTION TO CONFIRM PLAN 11-19-14 [30]**

Final Ruling: No appearance at the January 13, 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 November 19, 2014. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to

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

32. 10-48245-E-13 JEREMY/CONNIE HAYS
RK-1 Richard Kwun

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH PROGRESSIVE
11-24-14 [82]

Tentative Ruling: The Motion to Approve Compromise 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, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise 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 in interest are entered.

The Motion For Approval of Compromise is continued to 3:00 p.m. on February 3, 2015.

Jeremy and Connie Hays, the Chapter 13 Debtors, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Progressive Choice Insurance Company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are a bad faith claim against the

Settlor arising from the theft of Movant's vehicles and the subsequent denial of insurance coverage by Settlor. The amount of the settlement is $35,000.00

Attached to the Motion is the Declaration of Andrew Kalnoki, special counsel in the state law case ("Special Counsel"). Dckt. 85. Special Counsel states, in his opinion, the outcome of the trial was uncertain. If the Debtors prevailed at trial, Special Counsel states that he believes the best result would have been the reimbursement of the present fair market value of the vehicle, in the amount of $45,000.00 to $55,000.00. Because of credibility issues and the bad faith claim being weak, Special Counsel believes that the settlement is fair and equitable.

The Declaration states that the global settlement was for $35,000.00. Out of that sum, Progressive is to pay $25,000.00 and the junk yards $10,000.00.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 12, 2014. Dckt. 96. The Trustee states that the Motion is silent as to what party is to pay the filing fee to reopen the case, which is currently deferred. Dckt. 71. The case had been closed with a discharge on February 3, 2014 (dckt. 63) and was reopened pursuant to the motion of the Trustee who had served in the case. Dckt. 67. The Trustee believes the fee to reopen a Chapter 13 case is normally $235.00.

DEBTOR'S REPLY

The Debtors filed a reply to the Trustee's objection on December 23, 2014. Dckt. 102. The Debtors state that if the fee to reopen in the amount of $235.00 must be paid, then special counsel consents toward the fee being repaid from his award pursuant to the Motion for Fees. Dckt. 89.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Unfortunately, the Debtors do not provide a copy of the proposed settlement. While the Debtors in their Motion and in the supporting declaration outline the general terms of the settlement, without a copy of the settlement, encompassing all terms including the reopening fee, the court is unable to determine if the settlement is in the best interest of the Debtors and estate.

The Declaration of Special Counsel does describe the amount the defendants, Progressive and the junk yards, would pay towards the settlement. However, this is still remains too generic and does not provide sufficient details concerning the settlement for the court to find it is in the best interest of the estate. The court is uncertain what rights the Debtors are forfeiting in terms of the claims or whether the terms provide for additional relief that would not be in the best interest of the estate.

Instead of denying the Motion, the court continues the Motion to February 10, 2015 at 3:00 p.m. to allow the Debtors to file supplemental pleadings as well as a copy of the settlement agreement itself. The Debtors shall file and serve supplemental pleadings on or before January 27, 2015. If the settlement is confidential, the Debtors can file the settlement under seal and should contact Janet Larson, the courtroom deputy, on the procedures to do such. Any reply or responses shall be filed and served on or before February 3, 2015.

CHAMBERS PREPARED ORDER
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 to Approve Compromise filed by Jeremy and Connie Hays, the Chapter 13 Debtors, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on February 3, 2015.
>
> **IT IS FURTHER ORDERED** that Debtors shall file and serve supplemental pleadings and the settlement agreement on or before January 20, 2015. If the settlement agreement is confidential, the Debtors shall contact Janet Larson, the courtroom deputy, to file the settlement agreement under seal on or before January 27, 2015.
>
> **IT IS FURTHER ORDERED** that any reply or response shall be filed or served on or before January 27, 2015.
>
> The Clerk of the Court shall serve a copy of the Civil Minutes for this January 13, 2015 hearing and the order continuing the hearing to the Office of the U.S. Trustee, Region 17, Sacramento Division, Attn: Antonia Darling, Esq.
>
> The court has suspended the application of Federal Rule of Bankruptcy Procedure 41(a)(1) and Federal Rule of Bankruptcy

Procedure 7041 and 9014 for this Motion, which may be dismissed only upon order of the court after noticed hearing.

33. 10-48245-E-13 JEREMY/CONNIE HAYS — MOTION FOR REIMBURSEMENT OF FEES AND COSTS
RK-2 Richard Kwun — 12-3-14 [89]

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, parties requesting special notice, and Office of the United States Trustee on December 3, 2014. By the court's calculation, 41 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 continued to 3:00 p.m. on February 3, 2015.

Andrew Kalnoki, Special Counsel("Applicant") for Jeremy and Connie Hays, the Chapter 13 Debtors ("Client"), though Client, makes a Motion for Reimbursement of Fees and Costs in this case.

The Applicant is seeking compensation under the Contingency Fee between Applicant and Debtor in connection with a state law fraud, breach of contract, declaratory relief, conversion, intentional infliction of emotional distress and breach of the implied covenant of good faith claim. The order of the court

approving employment of Applicant was entered on November 3, 2014, Dckt. 80. Applicant requests fees in the amount of $11,676.00 (33.33% of the $35,000.00 settlement in the state law case). AN.1.

AN.1. The amount listed is based on the corrected amount Applicant states in Applicant's reply. Dckt. 105.

TRUSTEE'S RESPONSE

David Cacique, the Chapter 13 Trustee, filed a response to the instant Motion on December 12, 2014. Dckt. 99. The Trustee states that the retainer agreement filed as an exhibit (Dckt. 94, pg. 3, Section 5), provided for a $10,000.00 nonrefundable retainer received toward the attorney fees and 33.33% of any settlement without litigation was dated April 23, 2009. This bankruptcy proceeding was filed October 25, 2010. The trustee is not certain when Applicant was first aware of the bankruptcy proceeding, although it may have been July 2012 (Dckt. 77, pg. 1, lines 25-26).

While no executory contracts were assumed by the plan, and the Debtor obtained a discharge, if the retainer agreement is enforceable and the Debtor did already pay Applicant $10,000.00 toward the attorney fees, the order should not allow Applicant more than the $11,655.50, reduced by any credit for remaining retainer fees.

APPLICANT'S RESPONSE

Client, on behalf of Applicant, filed a response on December 23, 2014. Dckt. 105. The Applicant argues that the under the Agreement, the Applicant is entitled to compensation. Namely, the Applicant first argues that the Applicant waived the 40% contingency rate he was entitled to under the Agreement and instead requests only 33.33%. Dckt. 94, pg. 3, section 5. Because of this reduction, the Applicant argues that it would be inequitable if the unused portion of the $10,000.00 is now deducted from the 33.33%. The amount used from the $10,000.00 retainer was $425.00 filing fee charged by the Superior Court. Applicant states that after three and a half years litigating this mater and is entitled to the 33.33% of the $35,000.00 settlement amount as well as the remaining balance from the $10,000.00 retainer.

FIDUCIARY DUTIES OF DEBTORS AND SPECIAL COUNSEL

Upon the filing of a bankruptcy case the bankruptcy estate is created. In a Chapter 7 case a trustee is immediately appointed. In a Chapter 11 case the debtor serves as the debtor in possession, in the place of a trustee, unless the court subsequently appoints a trustee. In Chapter 12 and 13 cases, while a trustee is appointed and has party in interest standing, the Chapter 12 and Chapter 13 Debtor take control of the property of the estate and fulfill the duties of a trustee. When a plan is confirmed, the debtor or other person then ascends to the status of plan administrator to proper administer all of the property through the plan and properly pay creditors. These trustees, debtors in possess, Chapter 12 debtors, and Chapter 13 debtors are fiduciaries to the bankruptcy estate (the same as a trustee) and under the confirmed bankruptcy plans.

Trustees, debtors in possession, Chapter 12 and Chapter 13 debtors, and plan administrators may hire professionals to assist them in fulfilling their fiduciary duties. These professionals, including attorneys, have a fiduciary duty to the bankruptcy estate and to the plan estate created under a confirmed bankruptcy plan. *See In Re Brook Valley VII, Joint Venture*, 496 F.3d 892, 900 (8th Cir. 2007); *Woodson v. Fireman's Fund Insurance Company* (*In re Woodson*), 839 F.2d 610 (9th Cir. 1988); *In re Lee Way Holding Co.*, 102 BR. 616, 624 (S.D. Oh 1988).

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.

DISCUSSION

Applicant is arguing that by reducing the contingency fee from 40% as stated in the Legal Services Agreement to 33.33%, the Applicant is entitled to the 33.33% of the settlement and in addition be paid the $10,000.00 retainer on top of the 33.33% contingent fee.

Employment of Applicant was authorized on ex parte motion. No notice was provided for creditors and no opportunity for a hearing was provided. The Motion recounts a dispute between Applicant and Debtor’s bankruptcy counsel over the failure of the Debtor in having previously obtained authorization to employ Applicant and approve the settlement. Motion, Dckt. 74. The Motion states the following:

A. A tentative settlement has been reached in the amount of $35,000.00.

B. Applicant was unaware that Debtor was in bankruptcy.

C. Applicant is to be paid a 33% (explained subsequently to be a typographical error, with the correct percentage 33.33%) of the $35,000.00 settlement.

D. A copy of the employment agreement is included as Exhibit A (Dckt. 78).

Motion, Dckt. 74. No reference is made in the Motion for Applicant to be paid 33.33% of the settlement and an additional $10,000.00 from a retainer.

In support of the Motion for Authorization to Employ Applicant, the declaration of Andrew Kalnoki (Applicant) was filed. Dckt. 76. In it, Applicant makes various statements under penalty of perjury, including,

A. Applicant has agreed to serve as state court counsel for Debtor on the terms stated in Exhibit A.

B. Applicant has a fee agreement to be paid 33% of the settlement proceeds and "**I seek only 33% of the settlement proceeds.**" *Id.*, pg. 7:2 [emphasis added].

Applicant makes no reference to the $10,000.00 retainer in his declaration or any right to be paid the $10,000.00 in addition to the "only 33%" which he represented to the court to be his fees for the legal services provided.

The court granted the motion and approve the employment on the 33% contingent fee basis. Order, Dckt. 80. This court is sensitive to non-bankruptcy attorneys providing services to debtors, trustees, debtors in possession, and other fiduciaries of bankruptcy estates. Often times it may appear that there is a "maze of bankruptcy laws and rules" which could exist for purposes of maximizing bankruptcy attorney fees and diminishing non-bankruptcy attorneys' fees. While such is inaccurate, the necessary safeguards imposed by Congress under the Bankruptcy Code and the U.S. Supreme Court in the Bankruptcy Rules exist because of the additional fiduciary duties which do not exist in non-bankruptcy courts and to prevent the abuse of bankruptcy estates. The court quickly authorized the employment and 33% fee arrangement to allay concerns, if any, of Applicant that his valuable services would not be appropriately compensated.

The actual Legal Services Agreement provided to the court (Exhibit A, Dckt. 78), differs slightly from that stated in the Motion and by Applicant under penalty of perjury in his Declaration. That portion relevant to the present Motion for Approval of Fees states:

> **5. ATTORNEY'S FEES**
>
> Client _____JH_____ will pay attorney 33.33% of any gross settlement if this matter is resolved without litigation. Client [blank line] will pay attorney 40% of any gross settlement and/or judgment if this matter is resolved after a Complaint is filed and/or a demand for arbitration is made, and/or the matter is litigated.

Dckt. 94. Hand written under this section, there is a clause that reads:

10% nonrefundable retainer received toward attorney fees.

Dckt. 94. This Legal Services Agreement is dated April 23, 2009 - more than a year prior to the filing of the bankruptcy case. As with may contingent fee contract there is a two tier fee arrangement built around whether "litigation" is commenced. If "litigation" is not required, then the contingent fee is

33.33% of the gross settlement. If a complaint is filed, demand for arbitration made, or the matter is litigated (it appears to judgment), then the fee is 40% of any gross settlement or judgment. These percentages do not shock the court or appear to unreasonable for "normal" contingent fee cases taken for consumers.

The Legal Services Agreement also provides that the client shall pay the "costs" in connection with the representation under the Agreement. Examples of costs identified in the Legal Services Agreement are the type which one normally expects to see in such an agreement.

In addition to the above provisions, as part of the Attorneys Fees Agreement provisions (Section 5), there is the hand written provision that there is a $10,000.00 retainer which will be "toward attorney fees." The plain reading of this sentence is that the $10,000.00 will be applied to either the 33.33% or the 40% contingent attorneys' fee.

Alternation of Attorneys' Fees Authorized By Court

The present Motion requests that the court allow Applicant attorneys' fees computed at the 33.33% contingent fee rate. The Motion makes no reference to the $10,000.00 retainer. It merely states that counsel requests the court to approve attorneys' fees of $11,665.50 (33.33% of the $35,000.00 settlement).

Applicant provides his declaration in support of the present Motion. Dckt. 91. In it he testifies that a problem with Debtor's case was a policy defense asserted by the insurance company – Debtor's failure to disclose material information on the claim form. The material information was that Debtor was attempting to sell the insured property on Craig's list prior to it being reported as stolen. The insurance company had denied the insurance claim based on fraud.

Applicant's efforts resulted in Debtor obtaining a recovery on the insurance claim, but a bad faith denial claim could not be prosecuted. Instead, the claim advanced was that the insurance company negligently stored it after it was recovered.

Applicant testifies that he has put more than 200 hours into representing the Debtor on this claim. In this declaration he states that he is seeking 1/3rd of the settlement. No testimony is provided that in addition to the 33.33% computation of the attorneys' fees Applicant should also be paid an additional $10,000.00.

Only after the Trustee brought to light that the calculation of the portion of the Settlement Proceeds to be paid Applicant was determined after application of the $10,000.00 retainer did Applicant make any reference to the retainer. In his "Reply" declaration, Applicant states that it would be unfair for him to account for the Retainer given all of the time he has spent working on the Debtor's state court action. Dckt. 106. Applicant states that only $435.00 of the Retainer has been used to pay the filing fee.

Though Applicant states that he is actually entitled to a 40% contingent fee, he agreed to reduce it to 33.33%. He now testifies under penalty of perjury that he agreed to waive the 40% fee if they provided a $10,000.00 retainer. Declaration para 7, *Id.* This statement under penalty of

perjury is in conflict with (1) the plain language of the Legal Services Agreement, (2) the Motion to Employ Applicant, and (3) Applicant's prior declarations under penalty of perjury.

The court created a rudimentary chart to illustrate the total attorney's fees the Applicant would receive under his proposed compensation in the Motion compared to the fees that would be awarded under the plain language of the Legal Services Agreement.

	40% Contingent Fee **As Computed Under Plain Language of Legal Services Agreement**	**33.33% Contingent Fee + $10,000 Retainer** **As Proposed By Applicant**
Settlement Amount	$35,000.00	$35,000.00
Contingent Fee Computation	$35,000 x 40% **$14,000.00**	35,000.00 x 33.33% **$11,665.50**
Retention of Attorney's Fee Under Applicant's Proposal ($10,000.00 - $435.00 filing fee)		**$9,565.00**
	_____	_____
TOTAL ATTORNEYS' FEES TO BE PAID TO APPLICANT	**$14,000.00**	**$21,230.50**

As the chart shows, by "reducing" his attorneys' fee percentage to 33.33%, rather than the 40% provided under the Legal Services Agreement, Applicant would divert $7,230.50 of the settlement proceeds from the bankruptcy estate and the plan estate into his own pocket. This results in Applicant obtaining at the expense of the bankruptcy and plan estates a 51.65% overpayment of attorneys' fees as provided under the Legal Services Agreement and an 82% over payment of the 33.33% fees authorized by the court in the order authorizing Applicant's employment.

The Applicant, as a fiduciary of both the fiduciary Debtors in this case and under the and the estate itself appears to be misrepresenting his "good will" in reducing his contingency rate at the detriment of the estate, the Debtors, and the creditors. Under the guise of being willing to reduce the contingency, the Applicant is attempting to not only receive a percentage of the settlement but also to hold on to the retainer paid by the Debtors, exponentially increasing his fees. This type of activity concerns the court.

The court is also concerned that Debtors and Debtors' counsel, also as fiduciaries of the estate, would support this request for fees when it would be to the detriment to the estate and creditors.

It may be that Applicant may fee that the case was misrepresented to him by Debtor. Applicant may well have taken on one of those cases which is a "loser" when the effective hourly rate is computed. But for contingent fee attorneys that "loser" is offset by the winners in which the time spent is much lower than would be expected and the effectively hourly rate is well in excess of any reasonable loadstar computed amount. That is the economic life of the contingent fee attorney. However, such perceived "misrepresentation" is not a basis for not disclosing information to the court and stretching the truth (or omitting the truth) when the Motion to employ was filed and the present Motion for fees which did not disclose that the Applicant's fees were to include the $10,000.00 retainer.

This raises very serious issues for the court and federal judicial process. The court continues the hearing for several purposes. The Office of the U.S. Trustee has responsibility for overseeing not only the bankruptcy cases but the conduct of the parties therein. That Office in reviewing this matter may be clarity to the proper amount of fees. Additionally, that Office can determine what further proceedings, if any, are warranted. Additionally, Applicant, counsel for Debtor, and Debtor can also respond to the court's concerns and clarify the actual fees which are ultimately requested.

The court also orders the Clerk of the Court to serve a copy of the Civil Minutes for this January 13, 2015 hearing and the order continuing the hearing to the Office of the U.S. Trustee, Region 17, Sacramento Division, Attn: Antonia Darling, Esq.

Therefore, the Motion is continued to February 10, 2015 at 3:00 p.m. The Applicant, through the Debtors and Debtors' counsel, shall file and serve supplemental pleadings on or before January 27, 2015. The Trustee shall file and serve a reply, if any, on or before February 3, 2015.

CHAMBERS PREPARED ORDER

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 Andrew Kalnoki, Special Counsel("Applicant") for Jeremy and Connie Hays, the Chapter 13 Debtors ("Client"), though Client, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on February 3, 2015.
>
> **IT IS FURTHER ORDERED** that further pleadings shall be filed and served on or before January 27, 2015.
>
> The Clerk of the Court shall serve a copy of the Civil Minutes for this January 13, 2015 hearing and the

order continuing the hearing to the Office of the U.S. Trustee, Region 17, Sacramento Division, Attn: Antonia Darling, Esq.

The court has suspended the application of Federal Rule of Bankruptcy Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041 and 9014 for this Motion, which may be dismissed only upon order of the court after noticed hearing.

34. 10-23147-E-13 PAUL/OPHELIA LORRAY — MOTION TO SELL
WW-3 Mark A. Wolff — 12-23-14 [49]

Tentative Ruling: The Motion to Sell Property 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property 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 Sell Property is granted.

The Bankruptcy Code permits the Chapter 13 Debtors ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 9941 Kapalua Lane, Elk Grove, California

The proposed purchaser of the Property is George Dahdouh and the terms of the sale are a short sale with the purchase price of $750,000.00. The initial deposit will be $10,000.00. Then an increased deposit of $290,000.00 within seven days after acceptance. The remaining balance will be secured by a first loan in the amount of $450,000.00.

At the time of the hearing the court announced the proposed sale an requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Paul and Ophelia Lorray the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Paul and Ophelia Lorray the Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to George Dahdouh or nominee ("Buyer"), the Property commonly known as 9941 Kapalua Lane, Elk Grove, California("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $750,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 52, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Chapter 13 Debtors be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

35. 10-21448-E-13 RUFO/THELMA DELACRUZ MOTION TO MODIFY PLAN
RLC-1 Stephen Reynolds 11-10-14 [124]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

The Debtors having filed a “Withdrawal of Motion” for the pending Motion to Confirm, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Confirm, and good cause appearing, **the court dismisses without prejudice the Debtors’ Motion to Confirm**

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.
>
> A Motion to Confirm having been filed by the Debtors, the Debtors having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

36. 14-29448-E-13 BILLY GORBET **OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS**
DPC-1 **11-20-14 [26]**

Final Ruling: No appearance at the January 13, 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 20, 2014. By the court's calculation, 54 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 exemptions are disallowed in their entirety.

David Cusick, the Chapter 13 Trustee, objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal wavier has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 are disallowed in their entirety.

37. 14-20849-E-13 JERRY JORS — MOTION TO MODIFY PLAN
WW-4 Mark Wolff — 11-24-14 [66]

Final Ruling: No appearance at the January 13, 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 25, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

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 November 24, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 14-30249-E-13 DPC-1 JOHN/JESSIE HEINRICHS Marc Caraska OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 11-24-14 [22]

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the

United States Trustee on November 24, 2014. By the court's calculation, 50 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 Cacique, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtors' plan fails to provide for secured claim of the Internal Revenue Service filed on October 28, 2014,in the amount of $11,747.58. Proof of Claim No. 1. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtors either cannot afford the payments called for under the plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

2. Debtor Jessie Heinrichs failed to provide proof of her social security number at the first Meeting of Creditors held on November 20, 2014.

3. The Debtors' plan is not the Debtors' best effort, under 11 U.S.C. § 1325(b). The Debtors are under the median income and proposes plan payments of $322.40 for 60 month, with a 0% dividend to unsecured creditors. The Debtors admitted at the First Meeting of Creditors held on November 20, 2014 that he failed to list his income from social security in the amount of $2,500.00 on Schedule I.

The Trustee's objections are well-taken.

First, notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. *See* 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Second, the Debtor Jessie Heinrichs has failed to provide the necessary proof of her social security number at the first Meeting of Creditors which is required.

Third, the failure of the Debtors to disclose all of their income, including the social security income raises concerns over the feasibility of the plan and whether the Plan and the Debtors' petition is a true and accurate reflection of the Debtors' economic reality.

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.

39. 13-26157-E-13 JOEL JORDAN **MOTION TO MODIFY PLAN**
BLG-1 Paul Bains **11-13-14 [45]**

Final Ruling: No appearance at the January 13, 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 13, 2014. By the court's calculation, 61 days' notice was provided. 35 days' notice is required.

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

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

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 November 13, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

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

40. 11-23658-E-13 WESLEY/JULIE KAWAGISHI — MOTION TO MODIFY PLAN
MOH-6 Michael O. Hays — 11-17-14 [121]

Final Ruling: No appearance at the January 13, 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 November 25, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

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 November 17, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

41. 12-24258-E-13 DARRELL WILLIAMS — MOTION TO MODIFY PLAN
FF-6 Brian Turner — 11-14-14 [112]

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 14, 2014. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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.

Darrell Williams ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 14, 2014. Dckt. 112. Debtor states that his financial circumstances have changed due to an injury that left him unable to work for a period of approximately three months. During that time, the

Debtor was only receiving income from Worker Compensation. The income was significantly less than that of his normal salary. As such, Debtor fell behind in his plan payments.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 15, 2014. Dckt. 119. The Trustee objects to the Motion, stating that the Trustee is uncertain of the Debtor's ability to pay, 11 U.S.C. § 1325(1)(6). The Debtor did not submit Supplemental Schedules I and J in support of the Motion. The most recent Schedule I was filed on March 2, 2012. Dckt. 1. The most recent Schedule J was filed December 5, 2012. Dckt. 71.

DISCUSSION

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

The Trustee's objection is well-taken. The reason for the Debtor's instant Motion is a change in financial circumstances, namely the Debtor's injury which left him unable to work. Since this decreased his income and is the basis of his proposed modified plan, the court needs to see the current financial reality of the Debtor in the form of an amended Schedule I and J. Schedules that are three to four years old do not accurately reflect the Debtor's current financial situation, making it impossible to determine if the proposed modified plan is feasible and confirmable. Without this information, the court cannot confirm the plan.

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

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

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

42. 14-30959-E-13 DPC-1 KENNETH/FRANCINE YATES Robert Fong

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 12-16-14 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. 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 Cacique, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). At the 341 Meeting held on December 11, 2014, Debtors indicated that they would be moving to Washington State on December 12, 2014, the next day. Debtor Kenneth Yates has secured employment in Washington, but as a loss of income and Francine Yates has not yet found employment.

2. Debtors have improperly classified the claim of Nissan Motor Acceptance Corp as Class 4 in the plan. The plain language of the plan in Section 2.09 (Class 2) is secured claims that are modified by this plan or that have matured or will mature before the plan is complete. Debtors list in Class 4, Nissan Motor Acceptance Corp with a monthly contract payment of $804.00 per month. The balance of the loan listed on Schedule D is $30,905.84.

On November 11, 2014, Nissan filed Proof of Claim No. 1, which shows that Debtors entered the agreement with Nissan January 7, 2012 and agreed to a 60 month contract. Based on this information, the contract term does mature within the life of the plan and will be paid in full prior to conclusion of the 60 month plan proposed and therefore should be provided for in Class 2 of the plan.

3. Not all assets are listed. Debtors provided the Trustee with a copy of their insurance policy statement, which shows that Debtors have a 2011 Yamaha YZF-R6 insured under their policy. The vehicle is not listed on Schedule B as an asset of the Debtors. It appears the Debtors have not listed all their assets on Schedule B.

The Trustee’s objections are well-taken. The Debtors fail to properly explain how they will be able to make plan payments under the proposed plan when Debtor Kenneth Yates will be taking a reduction in pay at his new employment in Washington and Debtor Francine Yates has not yet found employment. This raises concerns over the feasibility of the plan and whether the Debtors will in fact have sufficient disposable income to make the required plan payments.

The Trustee’s second objection raises concerns over whether the plan is viable when the treatment of Nissan Motor Acceptance Corp is improperly listed in Class 4 instead of Class 2. The change in the terms of the contract may effect the treatment of Nissan and other creditors in the plan.

Lastly, the fact that a potentially high-value assets, here the 2011 Yamaha YZF-R6, is not listed as an asset by the Debtors makes the court question whether the Debtors have fully disclosed their current financial reality. Without having a full picture of the Debtors’ assets and liabilities the court is unable to determine if the plan is viable.

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.

43. 09-42762-E-13 PGM-3 | **WALTER WHITNACK AND NATALIE HARTMAN WHITNACK** Peter Macaluso | **MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR MOTION TO WAIVE JOINT DEBTOR'S 11 U.S.C. 1328 REQUIREMENT** 12-8-14 [114]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Waive Joint Debtor's 11 U.S.C. § 1328 Requirement and Requirement to File a Statement of Completion of Course in Personal Financial Management 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 Waive Joint Debtor's 11 U.S.C. § 1328 Requirement and Requirement to File a Statement of Completion of Course in Personal Financial Management is granted.

The Motion to Waive Joint Debtor's 11 U.S.C. § 1328 Requirement and Requirement to File a Statement of Completion of Course in Personal Financial Management has been filed by Walter Whitnack (deceased) and Natalie Hartman-Whitnack ("Debtors"). Debtors request that the court waive the 11 U.S.C. § 1328 requirement and requirement to file a statement of completion of course in Personal Financial Management for Debtor Walter Whitnack. AN.1.

AN.1. The Debtors also request that the court enter discharge for Debtor Walter Whitnack. First, the court notes that Fed. R. Civ. P. 18 does not permit multiple grounds for relief to be requested in the same motion. The Trustee has not yet filed his Final Report nor was the Final Report yet approved. The request for discharge is premature and not sought in the manner proscribed for Chapter 13 cases in this District.

Debtor Walter Whitnack passed away September 4, 2011. On September 16, 2013, the court entered an order substituting in Debtor Natalie Hartman-Whitnack as the representative for Debtor Walter Whitnack. Dckt. 103.

A Notice to Debtor of Competed Plan Payments and Obligation to File Documents was filed on November 14, 2014. Dckt. 112.

With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in the Plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. 11 U.S.C. § 1328 also requires that the Debtors complete a Personal Financial Management Course as well as filed a certificate of completion. Without a court waiving this requirement or a debtor completing and filing the certificate from the course, the court cannot grant a discharge.

Here, the issue is that Debtor Walter Whitnack has passed away, preventing him from completing the course. The court in the Order granting the substitution of Debtor Walter Whitnack with Debtor Natalie Hartman-Whitnack, the court found that the case could continued to be prosecuted with Debtor Natalie Hartman-Whitnack standing in the place of Debtor Walter Whitnack. The Debtors have completed their plan payments and are awaiting the Final Report from the Trustee.

The Trustee has filed a non-opposition to the Motion on December 9, 2014.

In the instant case, the circumstances justify the waiver of the 11 U.S.C. § 1328 requirement to attend a Personal Financial Management Course and file a certificate of completion for Debtor Walter Whitnack.

The Personal Representative of the deceased Debtor may continue to prosecute the case to obtain the entry of the discharge for Walter Whitnack.

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 Waive Joint Debtor's 11 U.S.C. § 1328 Requirement and Requirement to File a Statement of Completion of Course in Personal Financial Management filed by the Walter Whitnack (deceased) and Natalie Hartman-Whitnack ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the court waives the 11 U.S.C. § 1328 requirement to attend a Personal Financial Management Course and the filing of a certificate of completion for Debtor Walter Whitnack.

44. 11-23062-E-13 JIMMY/NAWASSHA SMITH — MOTION TO MODIFY PLAN
SDB-1 Scott de Bie — 11-12-14 [39]

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 12, 2014. By the court's calculation, 62 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.

Jimmy and Nawassha Smith ("Debtors") filed the instant Motion to Confirm the Modified Plan on November 12, 2014. Dckt. 39.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 15, 2014. Dckt. 46. The Trustee states that the Debtors are delinquent $571.00 under the terms of the proposed plan. $27,098.00 has become due under the proposed plan. The Debtors have paid a total of $26,527.00 to the Trustee with the last payment posted August 4, 2014. Another payment of $571.00 was due on December 25, 2014.

DISCUSSION

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

The Trustee's objections are well-taken. The Debtors' delinquency in plan payments under the proposed plan is grounds to deny confirmation. With no evidence submitted by Debtors showing that they have become current on the proposed plan payments, the proposed plan cannot be confirmed.

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

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

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

45. 14-29362-E-13 CHARLES/CLAUDIA BURNETT MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso 11-12-14 [23]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2014. By the court's calculation, 62 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 without prejudice the Motion to Confirm the Amended Plan.

Charles and Claudia Burnett ("Debtors") filed the instant Motion to Confirm the Amended Plan on November 12, 2014. Dckt. 23

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 12, 2014. Dckt. 35. The Trustee objects on the following grounds:

1. Declaration in support of Motion conflicts with the Plan. The Plan proposes payments of $150.00 for 1 month; $200.00 for 47 months and $549.00 for 12 months, however the Debtor's Declaration (Dckt. 27, paragraph 3) states "We will begin remitting payments of $450.00 per month starting November 25, 2014, then $789 for the last 12 months due to a 457 loan pay off"

2. It appears that the Plan is not the Debtor's best effort, under 11 U.S.C. § 1325(b). The Debtor is over the median income and proposes plan payments of $150.00 for 1 month; $200.00 for 47 months and $549.00 for 12 months with a 6% dividend to unsecured creditors, which totals $13,042.32 (unless the amount is to be $250.00 more as set forth in the Declaration).

Line 59 on Form B22C reflects negative income of $1,171.84, however, based on the Trustee's calculation of Form B22C Line 59 would be $2,844.00 with changes to Line 31, 39, 43, 47, and 55.

The Debtors amended Schedule J on November 12, 2014 and increased the expense for childcare and children's education costs for their 18 and 21 year old adult children from $50.00 to $300.00, a $250.00 change, without any explanation and the Trustee is uncertain if this expense is reasonably necessary for support of the Debtors or their dependents.

3. It appears that the plan will complete in 92 months as opposed to 60 months propose. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d) unless the plan payment is to be as set forth in the declaration (which completes within 60 months). The Debtors' plan payments total $16,138.00 and the Debtors are proposing to pay the following debts in the plan:

$3,000.00 attorney fees
$1,269.55 at 4% interest (Total $1,402.85 to USAA in Class 2;
$1,440.00 at 4% interest (Total $1,591.19) to RC Willey in Class 2;
$4,256.02 to Internal Revenue Service in Class 5
6% dividend to unsecured creditors totals $13,071.14 (Total unsecured=$217,854.00)

Grand Total to be paid through the Plan is $23,321.20.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objection on January 6, 2015. Dckt. 38. The Debtors request a continuance to allow the discrepancies to be resolved and further explained. Debtors' counsel states that the Trustee's concerns can be resolved but the resolutions may requires supplemental declarations.

DISCUSSION

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

Here, Debtors had the opportunity to prepare their Amended Plan, the Motion to Confirm, and Declaration(s) in support clearly identifying the changes in the finances. However, they elected not to preemptively address the changes. This may have been a mere oversight, or have been an attempt to "slip it by the Trustee" over the holidays. The Debtors offer no explanation as to increasing their expenses for their adult children. This makes it appear that the "expense" is really a made up number intended to improperly divert monies which should be paid to creditors.

In reviewing the Original and Amended Schedules J the court notes several interesting expenses. First, the Debtors have a monthly food/household supply expense of $1,000.00. No explanation is provided for this food expense which is 17% of the Debtors' net monthly income. The Debtors also list a transportation expense of $800.00, which is 11% of Debtors' monthly net income. Almost 40% of the Debtors' monthly income of $7,292.37 is exhausted on these two expenses.

The Debtor's expenses include an $1,100 a month mortgage payment on other property. On Schedule I the Debtors list additional income of $1,100.00 a month from the following source, "Mother Pays 1st Deed Directly." From Schedule I it appears that the $1,100.00 a month payment is made for the Whitney Avenue Property in which one of the Debtor's Mother lives. This property is not rented. The Debtors list as an expense $50.00 a month for insurance for the Mother's residence and do not show any payment for property taxes.

The Trustee's objections go to the basic facts which should have been presented with the Motion itself. This is not a routine bankruptcy case with simple issues. The Debtor have high food expenses and transportation expenses. If the Debtors are paying expenses for their two adult children, then the adult children's income should be considered. If the Debtors are choosing to provide a residence for a parent, then not only the cost to the estate needs to be considered, by the possible lost income from the failure to rent the property.

As the court has stated on prior occasions, it will not create a "game" environment in which parties can see an economic or tactical advantage to withhold information and then present it only when "caught" by the opposing parties or the court. These Debtors can "explain" these financial issues when they file a new motion, and possibly a further modified plan.

The Motion is denied without prejudice. This will afford the Debtors the opportunity to seek confirmation of the current plan, if warranted by the facts and law.

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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

46. 14-30265-E-13 FRANK/MARINA YAVROM
DPC-1 Timothy Walsh
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE
11-24-14 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 days' notice was provided. 14 days' notice is required.

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

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

Trustee opposes confirmation of the Plan on the basis that the plan relies on pending motion. The Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of PNC Bank, N.A. which is set for hearing on January 13, 2015. AN.1. If the Motion to Value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

AN.1. The Trustee stated in the Objection that it was a Motion to Value Collateral of National Bank. However, the only Motion to Value in this case

is a Motion to Value the Collateral of PNC Bank, N.A. Dckt. 17. The court assumes that this is the Motion to Value the Trustee is referencing.

The Trustee's objection is well-taken. The Debtor's plan is dependent on the valuation of the line of credit. However, as the court noted in its ruling on the Motion to Value, the court is unable to determine which creditor is the holder of the note. The court denied the Motion but urged the Debtor to refile after confirming the actual creditor.

To allow the Debtor the opportunity to refile given that Home Expo Financial Inc. filed Proof of Claim No. 5 in connection with the lien, the court will continue the Objection to March 3, 2015 at 3:00 p.m.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is continued to 3:00 p.m. on March 3, 2015.

47. 14-30265-E-13 FRANK/MARINA YAVROM
TJW-1 Timothy J. Walsh

MOTION TO VALUE COLLATERAL OF PNC BANK, N.A.
11-20-14 [17]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of PNC Bank, N.A. ("Creditor") is denied without prejudice.

The Motion filed by Frank and Marina Yavrom ("Debtor") to value the secured claim of PNC Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3005 Puffin Circle, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $300,000.00 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). AN.1.

AN.1. The court notes that the Debtor's Motion is difficult to read and understand the grounds being asserted because of the stylistic formatting and font choices by counsel. The Motion consists of text with is left margin justified, bold, and does not utilize paragraph numbering, section headings, indenting, or blank lines between paragraphs. The first step in writing effective pleadings is formatting them in a manner to make it easy for a judge, or much less experienced law clerk or law student extern, to understand what is being stated. If the reader had difficulty in seeing the words on the page, then the party has reduced its chances of effectively communicating the facts and legal points to the court.

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.

OPPOSITION

Home Expo Financial Inc., asserting that it is a successor in interest to PNC Bank, N.A., ("Home Expo") has filed an opposition. Dckt. 26.

Home Expo argues that the lien is not wholly unsecured and is not proven junior. Home Expo argues that Debtors have no presented proof of the priority of the liens and demands strict proof thereof.

Home Expo also argues that, given the narrow range of value at issue, Debtors must prove the exact balance owed the senior lienholder, should Home Expo not be senior. Upon filing a proof of claim by the other lienholder, or upon an informal showing to Home Expo, Home Expo states that it will drop this portion of its opposition.

Home Expo states that Debtors have understated the balance due to the junior lienholder. Should Home Expo's lien be junior and thus possibly eligible for lien stripping, Home Expo disagrees that its lien is wholly unsecured.

While Home Expo argues a different valuation of the property based on its own "research," Home Expos has not provided any evidence of such.

DISCUSSION

First, to address the Home Expo's objection, the court does not find persuasive the burden shifting that Home Expo is attempting to argue. Home Expo does not provide any evidence that its lien may be senior to that of Chase to counter the evidence presented by Debtor. Instead, Home Expo merely argues that Debtor's evidence is sufficient for Home Expo. The Debtor provides in their declaration under penalty of perjury that Chase Bank holds the first mortgage. Dckt. 19. Home Expo merely argues that Debtors have to prove the senior priority of the Chase Bank mortgage and the exact amount. Home Expo has failed to support a factual finding to the contrary.

Furthermore, in reviewing Proof of Claim No. 5 filed by Home Expo, the court notes that is for an equity line credit obligation. In general real estate credit lending practice, such an equity line of credit is junior to the secured claim for financing, or refinancing, the real property. While Chase Bank has not yet filed a proof of claim, the Debtor's valuation of the Chase Bank's mortgage at approximately $317,121.00 as reflected in Schedule D implies that Chase Bank holds a mortgage which would typically hold a senior position to a credit line.

Additionally, the evidence presented by Home Expo is the declaration of Henry Paloci III, its attorney in this bankruptcy case. Mr. Paloci states under penalty of perjury that he has personal knowledge of what he testifies to in the Declaration. He testifies,

A. He has reviewed files provided to him by Home Expo.

B. He has been a bankruptcy practitioner for seventeen years.

C. As the attorney advocate for Home Expo, he opines that the property securing the claim is worth more than $317,221.00 which secures the senior lien.

D. As the attorney advocate for Home Expo, he opines that the property has a value of $329,000.00.

E. He offers his opinion testimony to "rebut" the testimony of the Debtor.

F. He has no knowledge (and does not testify of any attempts he has made on his client, the junior lien holder, to ascertain) the amount of the senior debt.

Declaration, Dckt. 27.

This declaration is problematic on several grounds. First, counsel and Home Expo have chosen to make their attorney a witness in this bankruptcy case as to material factual matters concerning the Home Expo claim in this case. This not only impugns his credibility as an advocate, it may open the door to a waiver of the attorney-client privilege on these matters. More significantly, the declaration demonstrates that Mr. Paloci cannot meet the minimum requirements for providing credible testimony – personal knowledge. F.R.E. 601. Finally, the court finds it difficult to believe that Home Expo does not have, and has not provided its attorney, with the amount of the senior lien for this debt they purchased.

Second, Debtor seeks to value the collateral of "PNC Bank, N.A." However, the court cannot determine from the evidence presented whose secured claim is to be valued pursuant to this Motion. Home Expo is claiming that they are the holder of the note and have filed a Proof of Claim No. 5 on January 2, 2014. The court will not issue orders on incorrect or partial parties that are ineffective. The court recognizes that Home Expo filed the Proof of Claim No. 5 after the Debtor submitted filed the instant Motion. The court cannot issue an order valuing the claim when based on the evidence before the court, the court cannot determine who is the actual holder. The court notes that Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors and can refile a Motion to Value once they are certain to have named the proper creditor.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Frank and Marina Yavrom ("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.

48. 14-30866-E-13 **DENISE YAPP** **MOTION TO AVOID LIEN OF**
RAC-1 **Richard A. Chan** **CITIBANK, N.A.**
11-25-14 [14]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 25, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank, N.A.("Creditor") against property of Denise Yapp ("Debtor") commonly known as 831 Tulare Cir., Suisun City, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $6,610.56. An abstract of judgment was recorded with Solano County on September 26, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $280,000.00 as of the date of the petition. The unavoidable consensual liens total $180,301.86 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.950 in the amount of $99,698.14 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Solano County Case No. FCM135795, recorded on September 26, 2013 Document No. 201300093643 with the Solano County Recorder, against the real property commonly known as 831 Tulare Cir., Suisun City, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

49. 14-31066-E-13 DPC-1 — RICARDO/DIANA MANZANO — Thomas Gillis — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 12-23-14 [21]

Final Ruling: No appearance at the January 13, 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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. 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. 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 continue the Objection to 3:00 p.m. on January 27, 2015 to be heard in conjunction with the Motion to Value Collateral of Yolo Federal Credit Union.

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

1. Plan relies on pending motion. Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of Yolo Federal Credit Union on a second deed of trust which is set for hearing on January 27, 2015. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation. The trustee does not oppose this Objection being continued to January 27, 2015 to coincide with the Motion to Value Collateral.

2. Section 6 of the plan indicates that additional provisions are not appended to the plan, yet page 5 of the plan appears to contain additional provisions regarding the stop up in plan payments. The Trustee requests that the Order Confirming the plan correct this issue.

DEBTORS' REPLY

The Debtors' filed a reply to the Trustee's Objection on January 5, 2015. Dckt. 25. The Debtors state that the hearing on the Motion to Value is set for January 27, 2015. The Debtors request that the court either confirm their proposed plan or continue the hearing to be heard in conjunction with the Motion to Value.

DISCUSSION

Since the heart of the Trustee's objection is that the plan will fail if the Motion to Value is not granted and both attorneys are amicable to continuing the hearing to January 27, 2015 at 3:00 p.m. to be heard in conjunction with the Motion to Value, the objection is continued to 3:00 p.m. on January 27, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is continued to 3:00 p.m. on January 27, 2015.

50. 13-29769-E-13 JOHN JAMES **MOTION TO CONFIRM PLAN**
PGM-6 Peter Macaluso **11-17-14 [111]**

Final Ruling: No appearance at the January 13, 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 17, 2014. By the court's calculation, 57 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 17, 2014 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.

51. 14-27870-E-13 LATANYA MOORE **MOTION TO CONFIRM PLAN**
SJS-1 Scott Johnson **11-7-14 [29]**

Final Ruling: No appearance at the January 13, 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 7, 2014. By the court's calculation, 67 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 7, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

52. 14-29670-E-13 CHERRONE PETERSON — MOTION TO CONFIRM PLAN
PGM-1 Peter Macaluso — 11-19-14 [32]

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 19, 2014. 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 Motion to Confirm the Amended Plan is denied.

Cherrone Peterson ("Debtor") filed the instant Motion to Confirm Amended Plan on November 19, 2014. Dckt. 32.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, file an objection to the instant Motion on December 23, 2014. Dckt. 41. The Trustee objects on the following grounds:

1. Debtor has failed to provide the Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv). Debtor has not provided pay advices for her non-filing spouse.

2. The Debtor has failed to provide the Trustee with Business Documents including: Questionnaire, 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists, 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4022(b)(3). This is required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

3. Debtors amended Schedule I (Dckt. 27, pg. 8-10) indicates on line 8a that Debtor earns net business income of $1,200.00 per month. No attachment has been filed with the court showing the gross business income and expenses as required by the form.

4. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtors amended plan (Dckt. 34) calls for payments of $2,500.00 for 11 months, then $3,375.00 for forty eight months. Schedule I, #13 indicates that Debtor's spouse will have paid off his car in December 2014. Schedule J (Dckt. 37, pg. 12) lists the car payment on line 17a as $698.43. The Trustee is not certain the Debtor can make the increased plan payment, when the step increase is $875.00 and the projected budget item to be paid off is only $698.43, leaving a shortfall of $176.57. Debtor is below median income according to the amended Form 22C (Dckt. 29) and has a household of 7 people.

5. Section 2.06 of the plan indicates that attorney fees of $2,000.00 have been paid. The amended Statement of Financial Affairs, item 9 (Dckt. 27, pg 17) does not list the $2,000.00 fees paid by the Debtor

OCWEN LOAN SERVICING, LLC OBJECTION

Ocwen Loan Servicing, LLC ("Creditor") filed an objection to the instant Motion on December 30, 2014. Dckt. 45. The Creditor objects to confirmation of the Plan because the Plan proposes to modify a loan with a non-debtor. Creditor argues that the borrower of the note is Cedric Peterson. The Debtor is not a party to the Note and cannot modify the Note through the Plan.

The Creditor argues that even assuming *arguendo* that the Debtor could modify the Note, the Note is secured by the Property which the Debtor asserts is her primary residence. As such, the Creditor argues that 11

U.S.C. § 1322(b)(2) prevents the plan from modifying the Note. While the Debtor asserts that the Note can be modified pursuant to a loan modification request pending before Creditor, there is no such request pending. Accordingly, the Creditor argues there is no legal basis to confirm the proposed Plan with respect to Creditor.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's and Creditor's objections on January 6, 2015. Dckt. 50. The Debtor responds as follows:

1. Debtor provided 521 documents and non-filing spouse's requested documents to the Trustee on November 7, 2014 and on November 10, 2014, by email. The e-mail included U.S. Bank statements, pay advices of the non-filing spouse, 2012 and 2013 taxes, U.S. Bank statements for the business account and E Trade bank account.

2. Debtor e-mailed the Trustee on January 6, 2015 with her profit and loss statements for April 2014 to September 2014.

3. Debtor has historically received $500.00 per month, with all expenses being paid by the employing contractor, and as such it has no expenses to reflect.

4. Debtor is current under the proposed plan and believes between the payoff of the non-filing husband's car and regular increases in pay, the $875.00 increase is reasonable and necessary to provide as the total disposable income projected.

5. Debtor has paid counsel $2,000.00 prior to filing. Debtor will have an amended Statement of Financial Affairs filed on or before the hearing to reflect the amount and date received.

6. Debtor's plan does not seek to modify the claim of Creditor. The plan provides for adequate protection payments through the Trustee until a loan modification is either formally accepted or denied. No modification is being attempted absent consent.

Additionally, no documentation has been provided to the court that "Locke Lord, LLP" is, or has been given the authority of "managing counsel" for "Ocwen Loan Servicing" of that Counsel Simon A. Fleischmann has provided anything more than hearsay statements which are inadmissible given the admission that the litigation concerns "Ameriquest Mortgage Co., Mortgage Lending Practices Litigation."

DISCUSSION

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

To first address the objections raised by the Trustee, the Trustee's objections are well-taken. The Debtor's reply addresses the concern over the Statement of Financial of Affairs (which Debtor will correct by amending

it), thus the Trustee's fifth objection is overruled. However, the Trustee's remaining objections are sustained.

The Trustee's first and second objection concern Debtor's failure to provide necessary documentation to the Trustee. While the Debtor replies that such information has been provided, the Debtor does not provide a copy of the e-mail which allegedly had the required information attached. Without evidence that such documents were provided for, the Trustee's objection is sustained.

As to the Trustee's third objection, the Debtor's reply does not sufficiently respond. While the Debtor does explain why a business income and expense form was not attached to Debtor's Schedule I, the Debtor does not explain the discrepancy between the $500.00 a month alleged in the reply and the $1,200.00 a month alleged on Schedule I. Furthermore, even if the contractor pays for the expenses, the Debtor should provide an additional form that explains that as to have full transparency.

As to the Trustee's fourth objection, the Debtor seems to be relying on what may happen in the future to justify the increase in plan payments. While Debtor may have historically received a pay increase, there is no guarantee as to this. The Debtor does not provide evidence that the car has been fully paid off nor that Debtor has received an increase in pay of $176.57 to cover the remaining increase in plan payments. Without evidence of the actual ability to pay the proposed plan payments, the plan cannot be confirmed.

To address the Creditor's objection, the proposed plan does not attempt to modify the terms of the loan. While the placement of the Creditor's claim in Class 1 may be misleading, the Additional Provisions explicitly state that the Plan does not modify the terms of the Creditor's loan. Instead, it provides from adequate protection payments pending the alleged loan modification pending. If the Creditor does in fact not have a loan modification request from the Debtor or has already denied such request, the Additional Provisions, specifically Section 6.05 and 6.06, provides for the procedures in which the Creditor may take in order to enforce its rights. This practice has been used in the Eastern District for years to allow a plan to reach confirmation while a loan modification application is pending. This provision was forged with the assistance of various debtor and creditor attorneys. The additional adequate provisions includes the following express provision,

"The Chapter 13 Plan does not modify the rights of Ocwen Loan Servicing for Argent Mortgage Co. LLC for this secured claim, but provide adequate protect payments during the loan modification process."

There is no modification of this Creditor's secured claim. Therefore, the Creditor's objection is overruled.

Therefore, for the reasons stated supra, 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 without prejudice and the proposed Chapter 13 Plan is not confirmed.

53. 11-20771-E-13 ROBERT LAWLEY MOTION TO MODIFY PLAN
EJS-5 Eric Schwab 11-21-14 [90]

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 21, 2014. By the court's calculation, 53 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.

Robert Lawley ("Debtor") filed the instant Motion to Confirm Modified Plan on November 21, 2014. Dckt. 90.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 18, 2014. Dckt. 96. The Trustee objects on the following grounds:

1. Section 6.01 proposes a plan payment of $12,200.00 from February 2011 through November 2014, then $350.00 per month for the remainder of the plan. Through November 2014, the Debtor has actually paid $12,375.00, not $12,200.00 as stated. To date, the Debtor has paid a total of $12,725.00 with the last payment of $350.00 having posted December 8, 2014.

Additionally, Section 6.01, Debtor's Additional Provision, were added to page 6 of the Plan and not provided on a separate piece of paper and appended to the plan. Where the plan provides that any proposed additional provision shall be on a separate piece of paper and appended at the end of the form, and that any alteration in the preprinted text of the form will be given no effect, (Section 6), this plan arguable provides no monthly plan payment amount.

2. Debtor's Declaration (Dckt. 92, pg. 2, lines 22-25) states in part, "My schedules list personal property in the amount of $29,306.00 and I have properly exempted all assets." Debtor's Schedule B filed January 11, 2011 (Dckt. 1) actually reflects personal property in the amount of $53,962.00.

Debtor's Declaration (pg. 3, lines 4-5) states, "I believe that the proposed plan to pay off the remaining claims is feasible because I have the necessary cash on hand." Debtor's modified plan actually poposes a monthly payment of $350.00 for the remaining 14 months of the plan at 0% to unsecured creditors, which would be $4,900.00.

3. The Trustee is uncertain Debtor has the ability to make the proposed plan payment. Debtor is modifying his plan due to delinquency and a reduction in income. Debtor's Motion and Declaration indicate Debtor will be renting a room out in his house for $600.00 per month by the end of the year to offset the reduction in income. Debtor does not indicate whether there are any potential renters or a rental agreement in place. Debtor is basing his ability to make the proposed plan payment on projected income.

DISCUSSION

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

The Trustee's objections are well-taken. While the Trustee's first objection is technically correct, this error could easily be corrected in the order confirming the plan.

However, the remaining two objections are grounds to deny confirmation. First, the conflicting statements on the Debtor's assets as well as the available cash on hand raises questions as to the feasibility of the plan, particularly when the plan relies on the projected income of a renter. Second, the plan relies on the Debtor succeeding in renting out the extra room in Debtor's house. To date, there has been no supplemental filings by the Debtor to prove that the room has actually been rented and Debtor is receiving that additional income. Without that income, the Plan is not confirmable.

Additionally, failure to comply with the Local Bankruptcy Rules and set forth additional provisions on a separate section attached to the Plan is a substantial problem. The court does not leave the poor attorneys to guess when Rules will be enforced and when they will be ignored.

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

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

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

54. 14-30571-E-13 DPC-1 | FREDERIC LAURIDSEN AND ANGELA MILLA-LAURIDSEN Mikalah Liviakis | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 12-8-14 [24]

Final Ruling: No appearance at the January 13, 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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 36 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 continue the Objection to 3:00 p.m. on January 27, 2015.

David Cacique, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Frederic and Angela Lauridsen ("Debtors") have failed to appear at the First Meeting of Creditors held on December 4, 2014. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to January 15, 2015 at 10:30 a.m.

The Trustee requests that the court either enter an order denying confirmation or continue the hearing until January 27, 2015 at 3:00 p.m. after the meeting of creditors. The Trustee notes that the Debtors have commenced plan payments and are current.

At the request of the Trustee, the court will continue this hearing to 3:00 p.m. on January 27, 2015 in order to allow the Debtors to attend the rescheduled Meeting of Creditors.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is continued to 3:00 p.m. on January 27, 2015.

55. 13-30273-E-13 ELIAS ORTIZ — MOTION TO MODIFY PLAN
SJS-3 Scott Johnson — 11-24-14 [59]

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 24, 2014. By the court's calculation, 50 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.

Elias Ortiz ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 24, 2014. Dckt. 59.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 18, 2014. Dckt. 66. The Trustee objects on the following grounds:

1. Delinquent. It appears the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent $455.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of $2,355.00 have become due. The Debtor have paid a

total of $1,880.00 to the Trustee with the last payment posted on April 23, 2014 in the amount of $300.00.

2. According to the Trustee's calculations the Plan will complete in more than the 36 months proposed, possibly taking 53 months. This appears to be due to Debtor's delinquency under the confirmed plan and the proposed modified plan, and due to the percentage increase to unsecured creditor's from 0% to 23.60%.

3. Debtor does not provide an adequate explanation for his reduction in income.

Debtor's Amended Schedule I (Dckt. 58) reflects a marked reduction in income. Debtor's prior Schedule I filed August 2, 2013 (Dckt. 1, pg. 31) indicates Debtor's occupation was nursing and he was employed by Sutter Roseville earning an average monthly income of $2,765.16. Debtor's Amended Schedule I now states Debtor is employed by Sutter Health as a Certified Nursing Assistant with a monthly income of $1,783.83.

Debtor's Declaration (Dckt. 62, pg. 2 and 3, lines 26-27, 1-2) indicates he was injured at work which caused him to fall behind in his plan payments, but now has steady reliable employment and wages to continue payments.

Debtor does not indicate if he returned to the same job after his injury, a different job, if he is experiencing a reduction in hours, or what the reason is for the marked decrease in income. It would appear his employer remains the same.

4. Debtor may have additional disposable income. Debtor has included personal care expenses twice in his Amended Schedule J in the amount of $40.00.

DISCUSSION

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

The Trustee's objections are well-taken. The fact that the Debtor is delinquent in plan payments is sufficient on its own to deny confirmation. Additionally, the Plan's commitment period is beyond the permitted period for the Debtor.

The Debtor fails to explain why there is a reduction of nearly $1,000.00 in monthly income when it appears that the Debtor has returned to the same employer (albeit a different location). The failure to adequately explain this substantial decrease in monthly income raises feasibility questions.

Lastly, the existence of duplicate expenses on the Amended Schedule J raises concerns over whether the Amended Schedule I and J are truly reflective of the Debtor's current financial situation. While it might be a mere scrivener's error, this duplicate expense coupled with the unexplained reduction in monthly income raises issues on the actual feasibility of the plan.

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

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

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

56. 14-30673-E-13 DPC-1 FERNANDO/SUSANA ORTIZ Steven Alpert

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CACIQUE 12-8-14 [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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 36 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.

Trustee opposes confirmation of the Plan on the basis that:

1. The Debtor has failed to file a Motion to Value Collateral. The Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of TD Auto Finance in Class 2, but has not filed a motion to value collateral.

2. Assets on Schedule B not itemized. The Debtor listed restaurant equipment from their prior business on Schedule B. Dckt. 1, pg. 15. The Debtor values the equipment at $5,000.00, however the Debtor has failed to

provide an itemized list of the restaurant equipment.

The Trustee's objections are well-taken. While the Debtors have filed the Motion to Value Collateral, the Motion was denied for failing to plead with particularity as required by Fed. R. Bankr. P. 9013. Without the Motion to Value Collateral being granted, the Debtors cannot afford the Plan. Additionally, the failure of the Debtors to provide an itemized list of restaurant equipment makes it impossible to determine if that equipment could be used to the benefit of the estate.

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.

57. 14-30673-E-13 PLG-1 FERNANDO/SUSANA ORTIZ Steven Alpert

MOTION TO VALUE COLLATERAL OF TD AUTO FINANCE 12-16-14 [32]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and parties requesting special notice on December 16, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of TD Auto Finance("Creditor") is granted and Creditor's secured claim is determined to have a value of $13,000.00.

The Motion filed by Fernando and Susana Ortiz ("Debtors") to value the secured claim of TD Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of 2007 BMW 530(i)("Vehicle").

TD AUTO FINANCE LLC OPPOSITION

Creditor filed an opposition to the instant Motion on December 29, 2014. Dckt. 37. The Creditor argues that the Debtors fail to use the proper standard in determining their contention that the replacement value of the Vehicle is $11,924.00. The Creditor argues that the Debtors should be using

the retail value of the Vehicle and not the "Fair Purchase Price" because the retail value most closely represents a value equivalent to the "price a retail merchant would charge" in a typical purchase transaction. See 11 U.S.C. § 506(a). The Creditor argues that the proper valuation of the vehicle should be $13,325.00 pursuant to a NADA valuation. The Creditor also requests that the Debtors make the Vehicle available for inspection with regard to its condition and valuation.

DISCUSSION

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

A. The Debtors, Fernando & Susana Ortiz ("Debtors"), hereby move this Court to value the collateral securing Debtors' indebtedness to TD Auto Finance, to wit a 2007 BMW 530(I). Debtors value the collateral at $11,924.00. Estimated deficiency balance is to be allowed as general unsecured claim

B. Debtor incorporates by reference the Declaration of Debtor filed concurrently herewith.

C. Based on the foregoing, Debtors respectfully request that this motion be granted

It appears rather than pleading in the Motion the grounds, the Debtors direct the court to read the Debtor's declaration and assemble grounds for the Debtors from the Declaration. It is not proper for the court to provide legal services to one of the parties, such as assembling grounds for a party and restate a motion.

Debtor states in her declaration that she believes the fair retail value of the vehicle to be $11,924. While stating the value, Debtor does not state how she determines that this is the retail value.

However, Debtor makes reference to Exhibit 1 filed in support of the Motion, though the Debtor does not authenticate (FRE 901) this exhibit. The Exhibit purports to be a Kelley Blue Book Report of the value for the vehicle. It includes several numbers, one of which is the "Suggested Retail Price" of $12,624. The Debtor, for her Declaration, appears to be merely parroting another number on the unauthenticated Kelley Blue Book Report, the "Fair Purchase Price" estimate of $11,924.

As part of its Opposition, Creditor has provided the court with an NADA Guides Report of value for this vehicle. The NADA Report has been authenticated by Jennifer Wang (Declaration, Dckt. 38). The NADA Report (Exhibit C, Dckt. 39) is $13,325.00 for the "Clean Retail Value." This is consistent with the "retail value" required by 11 U.S.C. § 506(a)(2), assuming that the vehicle is currently in "show room floor" quality.

In her Declaration the Debtor does not testify as to any deferred maintenance or repairs necessary for the vehicle. Debtor uses the Kelley

Blue Book “Fair Purchase Price,” which the court interprets to be the clean retail value.

At the end of the day, it appears that the difference between Debtor’s evidence and creditor’s is $701.00 – $12,625 vs. $13,325.00. Even if properly maintained, to get it to “Clean Retail” condition, the dealer would need to have the vehicle inspected, oil changed, cleaned, and detailed. The court projects that such expenses total $325.00, thereby finding that the vehicle has a retail value of $13,000.00

The lien on the Vehicle’s title secures a purchase-money loan incurred in June 2011, (Installment Contract, Exhibit B, Dckt. 39), which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,116.15 (Proof of Claim, Exhibit B, Dckt. 39). 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 $13,000.00. *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 Fernando and Susana Graciela Ortiz (“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 TD Auto Finance, LLC (“Creditor”) secured by an asset described as 2007 BMW 530(i)(“Vehicle”) is determined to be a secured claim in the amount of $13,000.00, 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 $13,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

58. 14-30077-E-13 DPC-1 KENNETH/SHARON MELIKIAN Eric Schwab 11-24-14 [21] OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE

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, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 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.

Trustee opposes confirmation of the Plan on the basis that the Plan relies on Motion to Value Collateral. Debtors cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of Green Tree Servicing.

The Trustee's objections are well-taken. The Motion to Value Collateral of Green Tree Servicing was denied without prejudice on November 26, 2014. Dckt. 27. A review of the docket shows that Debtors have not filed another Motion to Value. As noted by the Trustee, without the Motion to Value being granted, the Debtors cannot comply with the Plan.

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.

59. 14-30278-E-13 DPC-1 GARY SHREVES AND KAREN BAYSINGER- SHREVES Mark Wolff

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 11-24-14 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 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 Cacique, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Plan relies on motion to avoid liens. The Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtors propose to avoid the liens of Cach, LLC and Portfolio Recovery. Debtors' plan does not have sufficient monies to pay the claim in full if these motions are not granted.

2. Not all tax returns have been filed. On November 19, 2014, the IRS filed Court Claim #5, which indicated that Debtors have not filed

returns during the 4-year period preceding the petition. Specifically, 2011, 2012, and 2013. See 11 U.S.C. § § 1308 and 1325(a)(9). The claim also indicates that Debtors have not filed a return for 2010. Debtors' 341 Meeting have been continued to January 8, 2015 to allow Debtors to address the unfiled returns.

3. Section 2.06 indicates that Debtors owe their counsel a balance of $3,318.00 in fees, but fail to indicate whether those fees are to be paid by the Trustee in accordance with Local Bankr. R. 2016-1(c) or whether the Debtors intend to file a separate motion for attorney fees.

The Trustee's objections are well-taken. The pending motions to value for Cach, LLC and Portfolio Recovery have been denied for failure to give sufficient notice. The Debtors have not filed the necessary tax returns for a period of four years. The Debtors' Plan does not specify how the attorneys fees are to be paid. The Plan cannot be confirmed when these issues remain.

Therefore, because of the reasons stated above, 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.

60. 14-30278-E-13 WW-1 | GARY SHREVES AND KAREN BAYSINGER- SHREVES Mark Wolff | MOTION TO AVOID LIEN OF CACH, LLC 12-30-14 [25]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Creditor on December 31, 2014. By the court's calculation, 13 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Gary Shreves and Karen Baysinger-Shreves ("Debtors") commonly known as 6642 Badger Court, Sacramento, California (the "Property").

However, the Debtors have failed to provide sufficient notice to the parties. The Debtors have only provided 13 days notice when 14 days notice is required under Local Bankr. R. 9014-1(f)(2).

The Notice for the hearing states, "If you do not file a response to this at least 14 calendar days prior to the scheduled hearing date, the Court may resolve the matter without oral argument and grant the relief

requested without a hearing." Dckt. 28. This is improper and conflates the Local Bankruptcy Rule 9014-1(f)(1) and (f)(2) separate notice procedures.

While the court is certain that this was not an intentional ploy done by Debtor's counsel to confuse the parties served, it does not provide the proper notice. For this court, merely continuing the matter is not a viable option, as such a procedure would create the opportunity for less scrupulous attorneys to try and squelch bona fide opposition from less sophisticated creditors. Since new notice of the hearing date and when opposition would be due must be required, a new motion can be filed and served with minimal additional work for Debtor's counsel.

Therefore, because of the failure to give proper notice to the Creditor, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

61. 14-30278-E-13 WW-2 | GARY SHREVES AND KAREN BAYSINGER- SHREVES Mark Wolff | MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES 12-30-14 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Creditor on December 31, 2014. By the court's calculation, 13 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates("Creditor") against property of Gary Shreves and Karen Baysinger-Shreves ("Debtors") commonly known as 6642 Badger Court, Sacramento, California (the "Property").

However, the Debtors have failed to provide sufficient notice to the parties. The Debtors have only provided 13 days notice when 14 days notice is required under Local Bankr. R. 9014-1(f)(2).

The Notice for the hearing states, "If you do not file a response to this at least 14 calendar days prior to the scheduled hearing date, the Court may resolve the matter without oral argument and grant the relief

requested without a hearing." Dckt. 28. This is improper and conflates the Local Bankruptcy Rule 9014-1(f)(1) and (f)(2) separate notice procedures.

While the court is certain that this was not an intentional ploy done by Debtor's counsel to confuse the parties served, it does not provide the proper notice. For this court, merely continuing the matter is not a viable option, as such a procedure would create the opportunity for less scrupulous attorneys to try and squelch bona fide opposition from less sophisticated creditors. Since new notice of the hearing date and when opposition would be due must be required, a new motion can be filed and served with minimal additional work for Debtor's counsel.

Therefore, because of the failure to give proper notice to the Creditor, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

62. 14-31478-E-13 JOHN CHAVEZ **MOTION TO VALUE COLLATERAL OF**
MC-1 Muoi Chea **E*TRADE BANK**
12-16-14 [14]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of E*Trade Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by John Chavez ("Debtor") to value the secured claim of E*Trade Bank, successor-in-interest to National City Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7337 Woodruff Way, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $116,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to**

> **the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $188,699.00. Creditor's second deed of trust secures a claim with a balance of approximately $51,708.00. 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 BR. 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 John Chavez ("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 E*Trade Bank, successor-in-interest to National City Bank secured by a second in priority deed of trust recorded against the real property commonly known as 7337 Woodruff Way, Citrus Heights, 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 $116,000.00 and is encumbered by senior liens securing claims in the amount of $188,699.00, which exceed the value of the Property which is subject to Creditor's lien.

63. 14-31478-E-13 JOHN CHAVEZ
MC-2 Muoi Chea

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
12-16-14 [19]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against property of John Chavez("Debtor") commonly known as 7337 Woodruff Way, Citrus Heights, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,687.36. An abstract of judgment was recorded with Sacramento County on August 17, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $116,000.00 as of the date of the petition. The unavoidable consensual liens total $188,699.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank (South Dakota), N.A., California Superior Court for Sacramento County Case No. 34-2009-00059827, recorded on August 17, 2010, Book 2010817 and Page 1535 with the Sacramento County Recorder, against the real property commonly known as 7337 Woodruff Way, Citrus Heights, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

64. 14-23079-E-13 SDH-2 DONALD/JULIENNE WOODWARD Scott Hughes

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 11-10-14 [33]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 10, 2014. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Postpetition Mortgage Fees, Expenses and Charges 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 Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges is sustained.

Debtors Donald and Julienne Woodward ("Debtor") objects to the Notice of Postpetition Mortgage Fees, Expenses and Charges filed by JPMorgan Chase Bank, N.A. on August 11, 2014 in the amount of $750.00. The notices alleges that Debtor owes $750.00 to JPMorgan Chase Bank, N.A. for "Bankruptcy/proof of claim fees" and "Fee Notice Preparation."

Debtor argues that she is not in default and was current to Creditor at the time the case was filed. Further, Debtor states that JPMorgan Chase Bank, N.A. did not object to the plan and has done no work in this case to justify $750.00 in additional fees.

The Debtors note that Pite Duncan, LLP has filed a Request for Special Notice in this case as attorneys for JPMorgan Chase Bank, N.A., a proof of claim, and the Notice in dispute. The Debtors argue, however, that this does not entitle JPMorgan Chase Bank, N.A. to $750.00 in attorneys fees.

The only evidence before the court is the Declaration from the Debtor stating that she was in fact current on the loan at the time the case

was filed and is still current. Debtor states that there was not work to be done to justify the $750.00 in additional fees, as they did not object to her plan. Debtor argues that since they has never been in default, she should not have to pay the alleged attorney's fees.

No evidence has been presented by Creditor JPMorgan Chase Bank, N.A. to substantiate its claim for $750.00 in attorney fees, such as a Declaration from the attorney regarding the legal work done, the rate charged or the hours spent.

Based on the evidence presented by the Debtor, the court sustains the objection and disallows the $750.00 in fees.

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 Notice of Postpetition Mortgage Fees, Expenses and Charges filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and the amounts set out in the Notice of Postpetition Mortgage Fees, Expenses and Charges ($375.00 attorneys' fees and $275.00 Proof of Claim Fee) filed by Creditor JPMorgan Chase Bank, N.A. on August 11, 2014 are disallowed in their entirety.

65. 14-23079-E-13 SDH-3 DONALD/JULIENNE WOODWARD Scott Hughes

MOTION TO AVOID LIEN OF CACH, LLC
11-25-14 [38]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 25, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial lien of CACH, LLC ("Creditor") against property of Donald and Julienne Woodward ("Debtor") commonly known as 554 Meadow View Drive, Susanville, California (the "Property").

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 hereby move to avoid a judgment lien (Abstract of Judgment) recorded by CACH, LLC in the amount of $3,790.89 on the grounds that is a judicial lien that impairs the debtors' ability to take a homestead exemption. If granted, the lien will be avoided; the creditor's secured claim will valued at

zero and the claim will be treated as a general unsecured claim.

B. The address of the debtors' residence is 554 Meadow View Drive, Susanville, California.

C. The Motion will be based on the Notice of Motion and Motion, the Points and Authorities filed herewith, the Declaration of Julienne Woodward and any other documentary or oral evidence presented at the hearing on the motion. AN.1.

AN.1. In addition to the Rule 9013 issues, this type of "and the kitchen sink" type of pleading raises series legal and ethical issues. Under the Local Bankruptcy Rules the Movant does not have the right to submit other evidence at the hearing. It has to be presented with the Motion or as part of a proper Reply. L.B.R. 9014-1(d)(5), (6) and (f)(1)(C). Movant misrepresents that it is exempt from the Local Rules and can surprise the other parties with additional evidence at the hearing. Such "sandbagging" is not permitted.

Even more troubling is that this type of pleading practice seeks to enlist the court (judge and law clerk) to serve as associate attorneys for the Movant - assembling the grounds for the Motion (which must be stated with particularity in the Motion) from the various other documents filed. It is not the court responsibility to state for a party the grounds upon which they assert relief is based and for which they provide the Federal Rule of Bankruptcy Procedure 9011 certifications. The court does not favor, represent, or advance the interests of any party before it, but is the independent determiner of the facts and law. Telling the court to dig through the pleadings and find what the court thinks the Movant should be asserting improperly impinges on the independent, impartial judiciary.

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 that it incorporates the other pleadings into the Motion without citing a single code section, the amount of exemptions taken by the Debtors on the Property, nor any other necessary elements for a Motion to Avoid a Judicial Lien. 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 BR. 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 BR. at 649-650; *see also In re White*, 409 BR. 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."

Therefore, because the Debtors failed to plead with particularity as required by Fed. R. Bankr. P. 9013, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

66. 14-29982-E-13 MARAH TORRES
DPC-1 Timothy Walsh

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE
11-7-14 [20]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1.It does not appear that the plan provides all of the Debtor's projected disposable income for the applicable commitment period, 11 U.S.C. § 1325(b). On October 29, 2014, the Trustee received Debtors' 2013 Tax Return. The Debtor received tax refunds of $13,067.00 from the Internal Revenue Service in 2014 representing federal tax refund for tax year 2013, Debtor also received $4,334 from Franchise Tax Board for a state tax refund. The tax refunds total $17,401.00. The Trustee is uncertain if Debtors

refunds are to remain this amount in the future, but requests that the Debtor be required to annually provide the Trustee with updated pay advices and tax returns. The Trustee also asks the Court to require the turn-over of any future tax refunds received to be contributed toward unsecured claims as an additional payment into the plan. On Schedule I, Debtor reports her average net income of $8,281.78 per month. If the Debtor contributed her tax refund into their household income at 1/12 per month, she would have an estimated additional $1,450.09 per month ($17,401/12=$1450.09).

2.The Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is above median income. Form 22C shows -$1,442.38. According to Schedule I, contributions of $651.42 per month were being made to a retirement loan and $64.00 per month for contribution to retirement. Debtor admitted at her First Meeting of Creditors on November 6, 2014, that the loan is expected to pay off in approximately 3 years. Debtor has not proposed an increase in her plan upon payoff of the retirement loan.

3.The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of One Main Financial, but has not filed a motion to value collateral The Debtor also proposes to value the secured claim of National City Bank, but has not filed a motion to value collateral. Debtor's plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

4.While the plan proposes to pay the attorney $2,200.00 through the plan under LBR 2016-1(c), the Disclosure of Compensation of Attorney for Debtors (Dckt. 1, pg. 35), appears to list it in item 6 that the attorney services do not include some services required under LBR 2015-1(c), such as relief from stay actions. The Trustee believes that the attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

5.On Schedule J (Dckt. 1, pg. 24), Debtor reports an expense for life insurance of $758.36. Debtor has not reported an interest in any life insurance policies on Schedule B (Dckt. 1, pg. 10, no.9). It appears the Debtor has failed to report all assets, or has inaccurately reported his expenses. The Trustee requests the Debtor provide evidence of the expense and the policy.

DECEMBER 9, 2014 HEARING

At the December 9, 2014 hearing, the court continued the hearing to 3:00 p.m. on January 23, 2015 at the request of Debtor's counsel.

Nothing further has been filed by any party.

DISCUSSION

The Trustee's objections are well-taken. First, the failure of the Debtor to account for the Debtor's tax refund in determining plan payments indicates that there is additional disposable income that should be applied to plan payments.

Secondly, the Trustee points out that the Debtor does not account for the end of the retirement loan repayment and does not provide for a step up in the plan once those monies could be applied towards the plan. This plan does not appear to be Debtor's best efforts.

Third, the plan also relies on motions to value collateral that have yet to be granted. A review of the docket shows that on November 20, 2014, Debtor filed a motion to value collateral concerning a PNC Bank loan but not the One Main Financial claim nor the National City Bank claim mentioned by the Trustee. Without these motions being granted, the plan is not feasible. Fourth, the discrepancy concerning the attorney costs raises doubts on the feasibility of the plan since the court cannot determine what method of payment Debtor's counsel is seeking, which directly effects the viability of the plan.

Lastly, the Debtor does not appear to be disclosing all assets. As noted by the Trustee, the Debtor states that she pays into a life insurance policy but does not list any life insurance policy as an asset. This omission leaves the court questioning whether the Debtor has disclosed all assets which is required to determine whether or not the plan complies with the Code.

The Debtor has not filed any supplemental pleadings to address the Trustee's remaining objections.

Therefore, because of the above stated reasons, 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.

67. 14-29982-E-13 MARAH TORRES
MDE-1 Timothy Walsh

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE, N.A.
10-17-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 17, 2014. By the court's calculation, 53 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Capital One, N.A. ("Creditor") opposes confirmation of the Plan on the basis that:

1.Pursuant to 11 U.S.C. § 1525(a)(5)(B), the value of a 2012 Chevrolet Cruz, VIN 1G1PC5SH6C7353627 ("Vehicle") to be distributed to Creditor is less than the allowed amount of Creditor's claim. According to the plan, Debtor has provided for Creditor's claim under Class 2 in which the claim is not reduced based on the value of collateral. However, Debtor

has understated the amount claimed by Creditor, $20,116.61; Creditor's claim is in the amount of $21,637.20.

2.Pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a), Debtor may not lien strip a debt incurred within 910 days prior to the filing of the petition and the Vehicle is the personal use of the Debtor. Creditor has a purchase money security interest securing the debt and the Vehicle was acquired for personal use of Debtor. The debt was incurred 764 days prior on September 3, 2012, which is within the 910-day period preceding the date of the filing of the petition on October 7, 2014. Based on the foregoing, the value of the Vehicle to be distributed under the plan on account of Creditor's claim may not be less than its claim amount: $21,637.20.

DECEMBER 9, 2014 HEARING

At the December 9, 2014 hearing, the court continued the hearing to 3:00 p.m. on January 23, 2015 at the request of Debtor's counsel.

DISCUSSION

While factually accurate as to the dollar amount, the Chapter 13 Plan does not purpose to reduce the amount of Creditor's claim. The Class 2 treatment expressly states that it is a claim "not reduced on the value of a collateral" and that it is a purchase money security interest. Rather, it appears that the Debtor's have merely been mistaken in the amount of the claim listed in Class 2.

The Chapter 13 Plan expressly provides that the amount of the claim shall be the amount set forth in the Proof of Claim, not in the Plan or Schedules, unless the court enters an order determining the amount of such claim. Chapter 13 Plan, Section 2 A, ¶ 2.04. Using the Creditor's claim amount of $21,637.20 and the 6% interest rate provided in the Plan, the monthly payments to this creditor during the 60 months of the plan would be $418.31. (The court estimates this amount using the Microsoft Excel Loan Calculator program.) This is $30.41 more than the monthly amount stated by Debtor in the Plan.

Creditor does not argue that this $30.41 difference renders the plan unfeasible. The Plan already requires that claim to be paid is that stated in the Proof of Claim (absent an order of the court valuing or disallowing the claim). No amendment is required to pay this Creditor based on a $21,637.20 claim.

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 Capital One, N.A. 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 overruled.

68. 14-29982-E-13 MARAH TORRES — **MOTION TO VALUE COLLATERAL OF PNC BANK, N.A.**
TJW-1 Timothy Walsh — **11-20-14 [24]**

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on November 20, 2014. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of 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. ("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).

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 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 BR. 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.

69. 14-30584-E-13 MARCOS LOPEZ
DPC-1 Oliver Greene

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 12-16-14 [34]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. 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 Cacique, 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 held on December 11, 2014. The Meeting has been continued to January 22, 2015 at 10:30 a.m. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.

2. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtor is $2,461.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $2,461.00 is due on December 25, 2014. The Debtor has paid $0.00 into the plan to date.

3. The Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $1,000.00 and the Debtor is proposing a 0% dividend to unsecured creditors. Debtor's non-exempt equity consists of jewelry on Schedule B.

The Trustee's objections are well-taken. The fact that the Debtor has failed to attend the First Meeting of Creditors and is delinquent in plan payments are each sufficient grounds to sustain the objection. A review of the proposed Plan also shows that the Debtor may in fact fail the Chapter 7 liquidation analysis.

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.

70. 14-30186-E-13 EVANGELINA GARIBAY **OBJECTION TO DEBTOR'S CLAIM OF**
DPC-1 Charnel James **EXEMPTIONS**
12-9-14 [36]

Final Ruling: No appearance at the January 13, 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 December 9, 2015. By the court's calculation, 35 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 overruled.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

> If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added).

The court's review of the docket reveals that the spousal wavier has been filed on January 6, 2015. Dckt. 41. Therefore, the Trustee's objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 overruled without prejudice.

71. 14-30186-E-13 DPC-2 EVANGELINA GARIBAY Charnel James

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE 12-9-14 [32]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2014. By the court's calculation, 35 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.

Trustee opposes confirmation of the Plan on the basis that:

1. Section 2.06 of Debtor's Plan indicates that attorney fees of $2,000.00 shall be paid through the plan. Section 2.07 fails to list a monthly dividend to be paid for attorney fees.

2. While the Plan in section 2.06 proposes to pay the attorney $2,500.00 through the Plan under Local Bankr. R. 2016-1(c), the Disclosure of compensation of Attorney for Debtors appears to list in item 6 that the attorney services do not include some services required under Local Bankr. R. 2016-1(c), such as dischargeability actions, judicial lien avoidances, and relief from stay actions. The Trustee believes that the attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

3. Filing fees not paid. Debtor has not complied with 11 U.S.C. § 1325(a)(2). On October 14, 2014, the court issued an Order Approving Payment of filing fees in installments. Dckt. 7. According to the order, installments are due November 13th and December 15th, 2014 and January 12th and February 11th, 2015. Debtor has paid the first installment of $77.00 due November 13, 2014.

4. Debtor's plan proposes to pay interest on arrears to USDA Rural Development in Class 1 for the First and Second Trust Deeds. However, based on the Proof of Claim No. 2-1 filed by the creditor, the promissory note was recorded August 11, 1982, therefore this creditor may not be entitled to interest under 11 U.S.C. § 1322(e) for the cure amount for the default.

5. Debtor's plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). Section 2.15 of the plan proposes to pay 0% to unsecured creditors and lists the total unsecured debt as $70.00. Schedule F lists one creditor, Sierra Receivables Management in the amount of $70.00. The Plan should propose 100% to unsecured creditors.

6. Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6). The Plan proposes to pay $870.63 per month for 60 months. Debtor's Schedule J shows net income on line 23c of only $514.00. Debtor does not have sufficient net income to make the plan payments.

7. The Debtor has claimed exemptions under C.C.P. § 703.140(b). Debtor testified at the First Meeting of Creditors held on December 4, 2014 that she is married, although the spouse has not joined in the petition. California Code of Civil Procedure § 703.140(a)(2) requires the Debtor to file a Spousal Waiver, signed by the Debtor and Debtor's spouse. The Trustee

has not found any such waiver filed with the court after a review of the court record.

DISCUSSION

The Trustee's objections are well-taken. The Debtor has not provided for the disbursement of attorney fees through the plan. The Debtor does not appear to have sufficient disposable income to fund the plan. The Debtor's proposed plan does not appear to be the Debtor's best efforts based on the failure to provide fully for the unsecured claim. The Debtor does not provide sufficient information to justify the payment of interest on arrears for the first and second trust deeds.

While the Debtor has paid the filing fee installment and has submitted the Spousal Waiver of Exemption, the remaining objections remain unresolved.

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.

72. 12-30588-E-13 DIANE/OSVALDO MALDONADO
ET-6 Matthew R. Eason

MOTION TO APPROVE LOAN MODIFICATION
12-8-14 [108]

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, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 36 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 continued to 3:00 p.m. on February 24, 2015.

The Motion to Approve Loan Modification filed by Diane and Osvaldo Maldonado ("Debtors") seeks court approval for Debtors to incur post-petition credit. Green Tree Servicing LLC (successor in interest to Bank of America, N.A.) ("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 $2,177.00 a month to $2,163.81 a month. The modification will have an interest rate of 4.625%, the principal amount

owed is changed to $384,612.11, any arrearage will be cured, and the length of the loan changed from 30 years to 40 years.

The Motion is supported by the Declaration of Debtors. 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 OBJECTION

David Cacique, the Chapter 13 Trustee, filed an objection to the instant motion on December 18, 2014. Dckt. 113.

The Trustee states that he has no objection to the terms of the loan modification. However, the Trustee is not certain if the loan modification agreement is being offered by the party who is the owner or holder of the existing note, and if it is not, the Trustee is not certain what authority the party offering the loan modification has to offer the loan modification.

The Trustee alleges that Proof of Claim No. 13 filed by Green Tree Servicing on September 19, 2012 for money loaned in the amount of $376,059.79 lists the creditor as Bank of America, N.A. and is signed by an attorney from Pite Duncan, LLP.

The Trustee is unsure whether Green Tree is the "lender" in a loan modification that appears to be owed to Bank of America, N.A.. There was a Notice of Transfer of Claim Other Than for Security filed on November 21, 2102 (dckt. 47) which transferred the claim, other than for security, from Bank of America, N.A. to Green Tree Servicing LLC. The Transfer provides no information on whether the underlying obligation of the loan transferred along with the deed of trust.

SUPPLEMENTAL DECLARATION OF TABIB HABIB

On December 31, 2014, Tabi Habib, Assistant Vice President of Bank of America, N.A. filed a supplemental declaration. Dckt. 116. In the declaration, Tabi Habib states that the original loan was executed by Debtors on March 25, 2010 with the principal amount of $388,900.00 made payable to Bank of America, N.A. The note is secured by a deed of trust encumbering the real property commonly known as 3560 Covello Cir., Cameron Park, California. On September 19, 2012, Bank of America, N.A. filed Proof of Claim No. 13-1 in Debtors' case.

Tabi Habib states that according to Bank of America, N.A. books and records, Bank of America, N.A. held possession of the Note and serviced the Loan from its origination to November 1, 2012, at which time it transferred possession of the Note and servicing rights for the Loan to Green Tree Servicing, LLC.

On October 12, 2012, Bank of America, N.A. sent a letter to the Debtors indicating the servicing of the Loan and right to collect payments under the Loan was assigned, sold, or transferred from Bank of America, N.A. to Green Tree Servicing, LLC effective November 1, 2012.

Tabi Habib states that as a result of the transfer of the servicing rights of the Loan and possession of the Note to Green Tree Servicing, LLC, Bank of America, N.A. no longer has any interest in the Loan.

Attached to the supplemental declaration is a copy of the October 12, 2012 letter sent to the Debtors. The letter, in relevant part states that:

1.“We are writing to inform you that your mortgage loan noted above will be transferred to a ***new servicer*** for the handling of ***all loan servicing needs*** such as billing, payment processing, and customer support.”

2.Please be assured that this transfer does not affect any other terms or conditions of your mortgage loan***, only those terms related to the servicing of the loan***.”

3.“For customers currently participating in or being considered for a loan modification program, we will transfer any supporting documentation you may have submitted to us to Green Tree Servicing, LLC.

4.If your loan was awaiting a decision regarding qualification of these programs, that decision will now be made by Green Tree Servicing, LLC.”

5.“You are hereby notified that the ***servicing*** of your mortgage loan, that is, the right to collect payments from you, will be assigned, sold or transferred from Bank of America, N.A. to Green Tree Servicing LLC, effective November 1, 2012.”

DISCUSSION

This court on prior occasions has had to question whether Green Tree Servicing, LLC was the actual “creditor” in the bankruptcy case or the loan servicer (which is a bona fide, legal, and economically beneficial service provided as the agent for the actual creditor).

As in those prior cases, Green Tree Servicing, LLC is purporting to be the “Lender.” Dckt. 111, Exhibit 1.

Bank of America, N.A. appears to be arguing that on November 1, 2012 it transferred possession of the Note and servicing rights for the Loan to Green Tree Servicing, LLC. To evidence this, Bank of America, N.A., through the declaration of Tabi Habib, attach a “good-bye” letter sent to the Debtors. However, all this “good-bye” letter shows is that Green Tree Servicing, LLC is, in fact, only the servicer and that Bank of America, N.A. is still the creditor. The letter itself states that the loan is being transferred to a “new servicer for handling of all loan servicing needs such as billing, payment processing, and customer support.” Nowhere in this letter does it state that the Note was transferred to Green Tree Servicing, LLC. None of the parties have provided an actual assignment or transfer of the Note to prove that Green Tree Servicing, LLC is the holder of the Note and therefore the Creditor. Bank of America, N.A. appears to hope for the court to take their word that the note was actually transferred. Unfortunately, the declaration of an Assistant Vice President is not sufficient evidence.

A review of the Proof of Claim filed in connection with this loan supports the court's conclusion that Bank of America, N.A. remains the actual creditor and Green Tree Servicing, LLC is merely the servicer. On Proof of Claim No. 13-1 filed by Green Tree Servicing, LLC has Bank of America, N.A. listed as the Creditor and Pite Duncan, LLP, Bank of America, N.A.'s attorneys, as the entity where notice should be sent. Nowhere on the Proof of Claim is Green Tree Servicing, LLC even mentioned.

Significantly undercutting the credibility of the Testimony of Tabi Habib and the arguments of Green Tree Servicing, LLC and its counsel is that on September 19, 2012, Bank of America, N.A. had filed a proof of claim stating under penalty of perjury that it is the creditor in this case. Proof of Claim No. 13. While on November 21, 2012 Green Tree Servicing, LLC filed a Notice of Transfer of Claim, no assignment of the claim has been filed and Bank of America, N.A. has not filed anything countering Proof of Claim No. 13. Merely because Green Tree Servicing, LLC files a document saying that it now owns a claim does not make it so. Presumably someone actually acquiring a claim would file an amended proof of claim, to which a copy of the assignment of the Note or other evidence would be attached.

Further, the "Good Bye" letter which Tabi Habib states supports his conclusion that Green Tree Servicing, LLC is in possession of the Note. The copy of the Note attached to Proof of Claim No. 13 is not endorsed in blank and the court is unsure as to the legal significance of Green Tree Servicing, LLC being in possession of notes made payable to Bank of American, N.A. have in the context of who the actual creditor is in this case.

There has been no basis presented for Green Tree Servicing, LLC, a self admitted loan servicing company, presenting itself as the "creditor" in this case for the obligation which is the basis for Proof of Claim No. 13. The Deed of Trust attached to Proof of Claim No. 13 identifies the "Lender" to be Bank of America, N.A.

No testimony or documentation has been provided that Green Tree Servicing, LLC is in possession of the Note, outside the declaration of Tabi Habib merely stating that it was transferred. It appears that either the representation in the "good-bye" letter that Bank of America, N.A. was transferring the servicing rights only to Green Tree Servicing, LLC is incorrect or Tabi Habib, in the declaration, lied under penalty of perjury that the Note was transferred to Green Tree Servicing, LLC.

The court finds it necessary to order Bank of America, N.A., their attorneys, Green Tree Servicing, LLC, and their attorneys to appear and present evidence of Green Tree Servicing, LLC to be the creditor for Proof of Claim No. 13 and the right to modify in its own name and not in the representative capacity of the creditor, the Note as provided in the Loan Modification Agreement.

If Green Tree Servicing, LLC is not the creditor, then signing documents not disclosing that (1) it is an agent, (2) identifying the actual creditor with whom the least sophisticated consumer debtor is contracting to modify the loan, and (3) showing its authority to act as the agent of the actual creditor, ti could well create a situation where "less ethical creditors" could use a dummy loan servicer to mislead creditors into

thinking that they have modified the loans. Then the “less ethical creditor” could sell the notes, presenting them at the unmodified amount and terms. The ultimate debt buyer in the chain of purchases could then, after the least sophisticated consumer debtor has paid for years, demand payment on the original terms, denying that the dummy loan servicer ever had any interest in the Note or authority to modify the terms in its own name. By then, the dummy loan servicer would have filed its own Chapter 7 bankruptcy case.

The conduct of a bona fide loan servicer acting as the agent for the principal, the creditor, is a very simple and basic concept. All that the loan servicer has to do is identify the principal in the Loan Modification Agreement and then execute the Loan Modification agreement for the creditor clearly stating the loan servicer’s agent status. Such conduct is routine in commercial transactions every day.

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.

Therefore, because the court cannot discern who, in fact, is the creditor and which party has the authority to enter into a Loan Modification with the Debtors, the hearing is continued to 3:00 p.m. on February 24, 2015.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not minute order form) 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 Diane and Osvaldo Maldonado having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that a hearing shall be conducted on February 24, 2015 at 3:00 p.m. to consider evidence and arguments concerning whether Green Tree Servicing, LLC is a creditor, as defined in 11 U.S.C. § 101(10) and (5), in this bankruptcy case.
>
> **IT IS FURTHER ORDERED** that Green Tree Servicing, LLC shall,
>
> A. On or before February 3, 2015, file and serve on Debtors' counsel, Bank of America, N.A., the U.S. Trustee, and the Chapter 13 Trustee,
>
> 1. Copies of all documents by which Green Tree Servicing, LLC asserts that it has

transferred or received any interests or rights in the obligation which is the basis for Proof of Claim No. 13 (a copy of which is attached to this Order as Addendum A).

2. Testimony provided by a person or persons with personal knowledge (Fed. R. Evid. 601, 602) to authenticate all documents produced, the transfer or transfers of any interests, who has been in possession of the promissory note upon which the obligation for Proof of Claim No. 13 is based, and the dates such person was in possession, the dates possession was transferred.

3. If Green Tree Servicing, LLC asserts that it is the person entitled to enforce the Note as the holder of bearer paper, provide competent, admissible evidence of: (1) when it took possession of the specific note for this claim and its regular business practices for and with its clients (identifying the clients) when it takes possession of such Notes; (2) the clients from whom it has taken possession of such Notes; (3) how long Green Tree Servicing, LLC has or did retain possession of such Notes; and (4) where such Notes are stored and who, for Green Tree Servicing, LLC, is in possession of such Notes.

B. Appear (No Telephonic Appearances Permitted) at the February 24, 2015 hearing, with counsel of its choice, through a Senior Green Tree Servicing, LLC Managing Member with personal knowledge of Proof of Claim No. 13, the obligation upon which Proof of Claim No. 13 is based, whether Green Tree Servicing, LLC asserts any interest in the obligation upon which Proof of Claim No. 13 is based, and whether the obligation to be modified as requested by the Debtors and Green Tree Servicing, LLC is an obligation to which Green Tree Servicing, LLC is a party or asserts any legal or equitable interest in or rights thereto.

IT IS FURTHER ORDERED that Green Tree Servicing, LLC, and each of them, shall bring with it and produce in open court on February 24, 2015, the original documents of all copies which are filed in court pursuant to this Order.

IT IS FURTHER ORDERED that Bank of America, N.A. shall,

A. On or before February 3, 2015, file and serve on Debtors' counsel, Green Tree Servicing, LLC, the U.S. Trustee, and the Chapter 13 Trustee,

1. Copies of all documents by which Bank of America, N.A. asserts that it has transferred or received any interests or rights in the obligation which is the basis for Proof of Claim No. 13 (a copy of which is attached to this Order as Addendum A).

2. Testimony provided by a person or persons with personal knowledge (Fed. R. Evid. 601, 602) to authenticate all documents produced, the transfer or transfers of any interests, who has been in possession of the promissory note upon which the obligation for Proof of Claim No. 13 is based, and the dates such person was in possession, the dates possession was transferred.

B. Appear (No Telephonic Appearances Permitted) at the February 24, 2015 hearing, with counsel of its choice, through a Senior Bank of America, N.A. Officer with personal knowledge of Proof of Claim No. 13, the obligation upon which Proof of Claim No. 13 is based, whether Green Tree Servicing, LLC asserts any interest in the obligation upon which Proof of Claim No. 13 is based, and whether the obligation to be modified as requested by the Debtors and Green Tree Servicing, LLC is an obligation to which Green Tree Servicing, LLC is a party or asserts any legal or equitable interest in or rights thereto.

IT IS FURTHER ORDERED that Bank of America, N.A., and each of them, shall bring with it and produce in open court on February 24, 2015, the original documents of all copies which are filed in court pursuant to this Order.

IT IS FURTHER ORDERED that on or before February 17, 2015, any reply or response shall be filed and served on Debtors' counsel, the U.S. Trustee, the Chapter 13 Trustee, Green Tree Servicing, LLC, and Bank of America, N.A.

The Clerk of the Court shall serve a copy of the Civil Minutes from the January 13, 2015 hearing on this Motion and this Order on Bank of America, N.A. at the following addressed:

1. Bank of America, N.A.
   Attn: Officer - Service of Process
   100 North Tryon St
   Charlotte, NC 28202

2. Bank of America, N.A.

Attn: Officer - Service of Process
150 N College St., NC1-028-17-06
Charlotte, NC 28255

3. Bank of America, N.A.
CT Corporation System
Attn: Officer - Service of Process
818 West Seventh St 2nd Fl
Los Angeles, CA 90017

4. Bank of America, N.A. Legal Department
Attn: Jaryn Barker, Esq. (Informational Copy)
CA5-704-04-19
P.O. Box 37000
San Francisco, CA 94137

73. 14-28888-E-13 MRL-1 | **JAMES/JENNIFER CRUM**
Mikalah Liviakis | **MOTION FOR COMPENSATION BY THE LAW OFFICE OF LIVIAKIS LAW FIRM FOR MIKALAH RAYMOND LIVIAKIS, DEBTORS' ATTORNEY**
12-10-14 [33]

Final Ruling: No appearance at the January 13, 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, parties requesting special notice, and Office of the United States Trustee on December 11, 2014. By the court's calculation, 33 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.

Mikalah Liviakis, the Attorney ("Applicant") for James and Jennifer Crum, the Chapter 13 Debtors ("Client"), makes a First Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period November 19, 2014 through December 9, 2014. Applicant requests fees in the amount of $889.00.

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). [n 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 reviewing Trustee's objection to confirmation, review liquidation analysis, draft response to Trustee's Objection, communications with Debtors, draft order confirming plan, and preparing and filing the instant Motion. 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 .6 hours in this category. Applicant communicated with Client through email and phone, reviewed tentative ruling, plans, and notice of withdrawal.

Objection to Confrimation: Applicant spent 1.6 hours in this category. Applicant reviewed the Trustee's objection to confirmation, performed liquidation analysis, and drafted response to Trustee's objection.

Order Confirming Plan: Applicant spent .2 hours in this category. Applicant drafted and reviewed order confirming plan.

Motion for Compensation: Applicant spent .8 hours in this category. Applicant drafted and reviewed the instant application for compensation.

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**
Mikalah Liviakis	1.3	$355.00	$461.50
"Attorney"	1.9	$225.00	$427.50
Total Fees For Period of Application			$889.00 AN.1

AN.1. The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. trustee, and other parties in interest to mine the records to construct a task billing.

The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

Additionally, the court typically requires that the Applicant provide a background for each party that did work in connection with the case. Typically, the name of each attorney as well as their professional background (i.e. how many years practicing, when barred, etc.) is required.

In the instant case, given the minimal amount requested, the court does not deny or continue the motion for the Applicant to correct these mistakes. However, for future reference, the Applicant should make sure that the application contains task billing as well as the necessary background of the attorneys and other staff members who have worked on the case for who compensation is being sought.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $889.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 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.

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

Fees $889.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 33 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 Mikalah Liviakis ("Applicant"), Attorney for the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Mikalah Liviakis is allowed the following fees and expenses as a professional of the Estate:
>
> Mikalah Liviakis, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $889.00,
>
> The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.
>
> **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 13 case under the confirmed plan in this case.

74. 14-31188-E-13 KATHIE SINKFIELD - WILLIS FF-1 Brian Turner

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION 11-25-14 [13]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on November 25, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Schools Financial Credit Union ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Kathie Sinkfield-Willis ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3336 Zalema Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $243,691.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to**

> **the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $314,994.96. Creditor's second deed of trust secures a claim with a balance of approximately $22,849.00. 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 BR. 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 Kathie Sinkfield-Willis ("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 Schools Financial Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 3336 Zalema Way, Sacramento, 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 $243,691.00 and is encumbered by senior liens securing claims in the amount of $314,994.96, which exceed the value of the Property which is subject to Creditor's lien.

75. 14-30389-E-13 MELISSA JONES
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE
11-24-14 [14]

Final Ruling: No appearance at the January 13, 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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 days' notice was provided. 14 days' notice is required.

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

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

Trustee opposes confirmation of the Plan on the basis that:

1. The Plan is not the Debtor's best effort, 11 U.S.C. § 1325(b). The Debtor is under the median income and proposes plan payments of $125.00 for 48 months with a 1% dividend to unsecured creditors, which totals $510.00. The Debtor provided the Trustee with her 2013 income tax return, which reflected a refund in the amount of $6,124.00. The Debtor has failed to propose to pay this into the Plan for the benefit of her creditors. The Debtor has not proposed to pay any future income tax refunds into the Plan.

The Debtor list an expense of $332.98 per month on schedule J for auto insurance. This expense does not appear reasonably necessary for the maintenance and support of the Debtor or the Debtor's dependants. The Debtor has the following automobiles listed on Schedule B:

1997 Honda Civic (Daughter's Car)
1999 Ford Expedition (Barely Driveable)
2004 Mercedes E500
2005 Honda Civic (poor condition)

The Debtor admitted at the first Meeting of Creditors that she has her boyfriend on her auto insurance, so that he can drive her car.

2. The Plan fails the Chapter 7 Liquidation analysis. It appears that the Plan fails the chapter 7 liquidation analysis, under 11 U.S.C. § 1325(a)(4). The Debtor admitted at First Meeting of Creditors held on November 20, 2014 that she created the "Melissa Jones Living Trust" two months prior to filing this bankruptcy case and all assets listed in the

Petition are held in the Trust. The Debtor has listed the Trust on Schedule B with no value, stating that all of the assets are listed on other parts of Schedule B. It does not appear that the Debtor is entitled to any of the exemptions listed on Schedule C as the assets are held in the Debtor's trust, therefore the non-exempt equity is $108,776.00 and the Debtor is proposing a 0% dividend to unsecured creditors.

3. The Debtor cannot make the payments, 11 U.S.C. § 1325(a)(6). The Debtor lists income of $250.00 on Schedule I from friends and family, however the Debtor has failed to provide a Declaration regarding the willingness and ability of family and friends to contribute this monthly income.

DEBTOR'S RESPONSE

The Debtor filed a reply to the Trustee's objection on December 30, 2014. Dckt. 22. The Debtor responds in the order of the Trustee's objections as such:

1. The Debtor received a tax refund in 2013 of $6,124.00 and the Trustee objected because the Debtor failed to "propose to pay any future income tax refunds into the Plan."

The Trustee fails to consider the source of the "refunds" which has been provided.

A review of the 2013 tax return reveals that $15,965.00, include $4,738.00 in paid income taxes, $9,677.00 in form 1098 interest, and $1,550.00 in charity, for a total of $15,965.00, deduction against a $45,936.00 income for the Debtor and her dependant son.

The Debtor receives a deduction for the interest the Debtor receives on the forms: #8396 ($2,689.00) and #8813 ($1,000.00). However, after allowing for the standard exemptions of $7,800.00, the Debtor's taxable income is only $22,171.00, and a tax of $2,689.00, and which $5,124.00 was withheld, or $2,424, or $202.92 per month.

In this case, the Debtor and her son have yearly needs, i.e. school year demands, unexpected medical, car registration, cost of tax return preparations which readily account for the tax refunds which the Debtor historically receives.

2. Debtor's car insurance is $332.98, for four cars and which includes an additional driver, which could be apportioned to approximately $120.00 per month.

As such, the Debtor has an additional $120.00 per month disposable income which could be remedied in the Order Confirming

3. The reality of this case reflects that the Debtor has an interest in $8,776.00 in personal assets and $100,000.00 in real property.

Whether the "trust" was perfected or even created properly by the Debtor, and whether the "res" includes the home or is merely a probate living will for medical purposes has not been established.

Debtor requests that the Objection be denied and that the Plan be continued for thirty days for a determination.

DISCUSSION

This Debtor appears to have several serious issues to address, which go directly to her credibility and ability to prosecute this Chapter 13 case in good faith. Debtor fails to list any transfers in response to Question 10 on the Statement of Financial Affairs. Dckt. 1 at 43. If the transfers were made and the property is in the Trust, then that needs to be accurately disclosed. It cannot be, "there is a trust, no there's not a trust, guess where the assets are today."

When the Debtor filed the case she knew that her expenses included $120.00 insurance payment for her boyfriend. That was not disclosed, and some creditors may argue that it was intentionally hidden to defraud creditors and divert money to the boyfriend. The question then arises whether the Debtor is providing a vehicle to her boyfriend at the creditor's expense.

Additionally, while the Debtor's attorney argues the "facts" stated above, the Debtor has failed, or refuses, to provide such testimony under penalty of perjury. This failure causes further questions to arise concerning the credibility of the Debtor and any statements she may seek to present to the court.

The court has continued the Trustee's Objection to Exemptions to 3:00 p.m. on February 3, 2015.

The court continues continue the hearing on the instant Motion to the same date so the two matters can be heard in conjunction. The court continues this in light of the Debtor being represented and to afford an opportunity to immediate correct any problems.

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 is continued to 3:00 p.m. on February 3, 2015.

76. 14-30389-E-13 MELISSA JONES
DPC-2 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
11-24-14 [18]

Final Ruling: No appearance at the January 13, 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 Debtor, and Debtor's Attorney on November 24, 2014. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Objection to Debtor's Claim of Exemptions 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 Objection to Debtor's Claim of Exemptions is continued to 3:00 p.m. on February 3, 2015.

David Cacique, the Chapter 13 Trustee, filed the instate Objection to Debtor's Claim of Exemptions on November 24, 2014. Dckt. 18. The Trustee objects to Melissa Jones' ("Debtor") exemptions on the following grounds:

1.The Debtor is not entitled to the exemptions claimed on Schedule C. The Debtor is not entitled to any of the exemptions claimed on Schedule C as the Debtor admitted at First Meeting of Creditors held on November 20, 2014 that she created the "Melissa Jones Living Trust" two months prior to filing this bankruptcy case and all assets listed in the Petition are held in the Trust.

2.The Debtor has improperly exempted the Trust on Schedule C. The debtor lists the "Melissa Jones Living Trust- setup intended for probate purposes; all assets listed in petition" on Schedule C and exempts 75% of $0.00 under the Code of Civil Procedure § 704.070. This Code section provides an exemption for paid earning, which the Debtor has failed to provide any evidence that the income from her employment as a project analyst for the State of California is listed as a trust asset.

DEBTOR'S REPLY

Debtor filed a reply to the Trustee's Objection on December 30, 2014. Dckt. 24. The Debtor requests a continuance of the hearing for 30 days in order to provide the Trustee with the "Melissa Jones Living Trust" documentation and evidence that it was properly created.

APPLICABLE LAW

California Code of Civil Procedure § 704.070 states:

Paid Earnings

(a) As used in this section:

(1) "Earnings withholding order" means an earnings withholding order under Chapter 5 (commencing with Section 706.010) (Wage Garnishment Law).

(2) "Paid earnings" means earnings as defined in Section 706.011 that were paid to the employee during the 30-day period ending on the date of the levy. For the purposes of this paragraph, where earnings that have been paid to the employee are sought to be subjected to the enforcement of a money judgment other than by a levy, the date of levy is deemed to be the date the earnings were otherwise subjected to the enforcement of the judgment.

(3) "Earnings assignment order for support" means an earnings assignment order for support as defined in Section 706.011.

(b) Paid earnings that can be traced into deposit accounts or in the form of cash or its equivalent as provided in Section 703.080 are exempt in the following amounts:

(1) All of the paid earnings are exempt if prior to payment to the employee they were subject to an earnings withholding order or an earnings assignment order for support.

(2) Seventy-five percent of the paid earnings that are levied upon or otherwise sought to be subjected to the enforcement of a money judgment are exempt if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support.

DISCUSSION

While the Trustee's objections appear to be sound based on the review of Debtor's Schedule B and C, the court will continue the hearing to 3:00 p.m. on February 3, 2015 to allow Debtor and Debtor's counsel the opportunity to provide documentation and evidence to the Trustee concerning the "Melissa Jones Living Trust" and the applicability of California Code of Civil Procedure § 704.070 to the Trust. The Debtor shall file supplemental pleadings on or before January 20, 2015. Any response or objection shall be filed on or before January 27, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor’s Claim of Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is continued to 3:00 p.m. on February 3, 2015.
>
> **IT IS FURTHER ORDERED** that the Debtor shall file supplemental pleadings on or before January 20, 2015. Any response or objection shall be filed on or before January 27, 2015.

77. 13-32494-E-13 THEODORE/MOLLY MCQUEEN — MOTION TO CONFIRM PLAN
CAH-8 C. Anthony Hughes — 11-25-14 [219]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 25, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on February 10, 2015.

Theodore and Molly McQueen ("Debtors") filed the instant Motion to Confirm Third amended Chapter 13 Plan on November 25, 2014. Dckt. 219.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed an objection to the instant Motion on December 12, 2014. Dckt. 229. The Trustee objects on the following grounds:

1. The Debtor has altered section 2.06 of the standard language in the Chapter 13 Plan. The Plan states "Debtors' attorney will seek the court's approval by stipulation between debtor, trustee, and creditor G&K Heaven's Best, Inc." This language should be in the Additional Provisions of the Plan.

2. Trustee's prior objections remain unresolved. The Trustee raised the following issues in the Trustee's Objection to Debtor's Motion to Confirm Second Amended Plan (Dckt. 142): "The court entered an order on March 20, 2014 (in Adversary 14-0204, Dckt. 23), which ordered certain funds to be paid or transferred to the Chapter 13 Trustee. The Plan does not address if its proposes to superseded this order and allow the monies paid to the chapter 13 Trustee to be treated as plan payments to be paid out to allowed claims under the proposed plan, possibly increasing the percentage paid to unsecured claims."

3. No dividend proposed to unsecured creditors. Section 2.15 of the Plan provides "See Additional Provision." The Additional Provisions states "The Third Amended Chapter 13 Plan will pay no less than $25,000.00 to the Class 7 unsecured claims." The Debtors have failed to provide a specific percentage for the unsecured claims, the trustee calculates that the unsecured creditors will receive approximately 13.6%.

DEBTORS' RESPONSE

The Debtors filed a response to the Trustee's objections on December 23, 2014. Dckt. 232. The Debtors respond in order of the Trustee's objections as such:

1. Concerning the altered language, Debtors' attorney would like to strike this language from the plan.

2. With regard to the $3,250.00 that was transferred to the Chapter 13 Trustee on March 24, 2014, Debtors' attorney requests these funds be treated as plan payments to be paid out to allowed claims, under the proposed Third Amended Plan, thus possibly increasing the percentage paid to unsecured claims.

3. Debtors' attorney would like the Third Amended Plan to provide for no less than 15.2% to be disbursed to the Class 7 allowed claims. This percentage should account for the additional $3,250.00 being paid into the plan.

DISCUSSION

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

The Trustee's objections are well-taken. While the Debtors' response attempts to correct the issues highlighted by the Trustee, the treatment of the $3,250.00, the percentage paid to unsecured claims, and the altered language are more substantive than a mere scrivener's error that would normally be corrected in the order confirming the plan. The treatment of the $3,250.00 paid to the Trustee and its disbursement in the plan must be reflected in the proposed Plan and the Additional Provisions.

As the Plan currently stands, the court will not confirm it because it does not fully discuss the treatment of unsecured claims nor the treatment of the $3,250.00. The fact that this is the Debtors' third attempt at getting this plan confirmed and the same objection being raised by the Trustee raises concerns over the feasibility of this plan as well. Without

full disclosure on how the proposed Plan and the assets of the estate will be handled, the Plan cannot be confirmed.

However, the court also notes that there has been only one active creditor in this case, G&K Heaven's Best, Inc. The issues with this creditor have been hotly contested, with it holding both a secured and unsecured claim.

Rather than putting all the parties to the cost and expense of starting this process over, the court,

(1) Orders the Debtor to file a Supplemental Exhibit the draft proposed Fourth Amended Chapter 13 Plan, which contains all amendments to address the Objections filed to confirmation of the Third Amended Chapter 13 Plan which Debtor seeks to confirm pursuant to this Motion. The supplemental pleading shall be filed and served on all parties in interest on or before January 20, 2015.

(2) In addition to serving the Supplemental Exhibit, Debtor shall serve notice of a continued hearing which informs creditors that any opposition to confirmation of the proposed Fourth Amended Chapter 13 Plan served as the Supplemental Exhibit shall be filed and served on or before February 3, 2015. Any Reply by Debtor shall be filed and served on or before February 12, 2015.

(3) The hearing on the Motion to Confirm is continued to February 10, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion 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 hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on February 10, 2014.
>
> **IT IS FURTHER ORDERED** that,
>
> (1) Debtor shall file a Supplemental Exhibit the draft proposed Fourth Amended Chapter 13 Plan, which contains all amendments to address the Objections filed to confirmation of the Third Amended Chapter 13 Plan which Debtor seeks to confirm pursuant to this Motion. The supplemental pleading shall be filed and served on all parties in interest on or before January 20, 2015.
>
> (2) In addition to serving the Supplemental Exhibit, Debtor shall serve notice of a continued hearing which

informs creditors that any opposition to confirmation of the proposed Fourth Amended Chapter 13 Plan served as the Supplemental Exhibit shall be filed and served on or before February 3, 2015. Any Reply by Debtor shall be filed and served on or before February 12, 2015.

78. 14-30994-E-13 JOHN MONROE
DPC-1 Kristy Hernandez
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE
12-16-14 [24]

Final Ruling: No appearance at the January 13, 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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection.

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

1. Plan relies on a Motion to Value. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of Citifinancial which is currently set for hearing on January 13, 2015. Debtor's plan does not have sufficient monies to pay the claim in full if the motion is not granted.

At the January 13, 2015 hearing, the court granted the Debtor's Motion to Value Collateral of Citifiancial Services, Inc. Therefore the Trustee's objection is overruled.

Because no further objections are pending, 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 November 6, 2014 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.

79. 14-30994-E-13 JOHN MONROE
HLG-1 Kristy A. Hernandez

MOTION TO VALUE COLLATERAL OF CITIFINANCIAL SERVICES, INC.
12-15-14 [17]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by John Monroe ("Debtor") to value the secured claim of CitiFinancial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2428 Skyview Circle, Fairfiled, California ("Property"). Debtor seeks to value the Property at a fair market value of $438,389.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the**

> **estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $491,939.00. Creditor's second deed of trust secures a claim with a balance of approximately $25,168.00. 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 BR. 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 John Monroe ("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 CitiFinancial Services, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 2428 Skyview Circle, Fairfield, 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 $438,389.00 and is encumbered by senior liens securing claims in the amount of $491,939.00, which exceed the value of the Property which is subject to Creditor's lien.

80. 14-31894-E-13 MOISES ARTEAGA
MET-1

MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
12-22-14 [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, Creditor, and Office of the United States Trustee on December 22, 2014. By the court's calculation, 22 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 JPMorgan Chase 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 Moises Artega ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 200 Poplar Street, Vacaville, California ("Property"). Debtor seeks to value the Property at a fair market value of $180,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $273,733.00. Creditor's second deed of trust secures a claim with a balance of approximately $50,000.00. 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 BR. 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 Moises Arteaga ("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 JPMorgan Chase Bank, N.A. secured by a second in priority deed of trust recorded against the real

property commonly known as 200 Poplar Street, 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 $180,000.00 and is encumbered by senior liens securing claims in the amount of $273,733.00, which exceed the value of the Property which is subject to Creditor's lien.

81. 13-29395-E-13 FRANK/GRACE MURPHY MOTION TO CONFIRM PLAN
BLG-1 Paul Bains 11-16-14 [40]

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 17, 2014. By the court's calculation, 57 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.

Frank and Grace Murphy ("Debtors") filed the instant Motion to Confirm the Modified Plan on November 16, 2014. Dckt. 40.

TRUSTEE'S OBJECTIONS

David Cacique, the Chapter 13 Trustee, filed a limited objection to the instant Motion on December 18, 2014. Dckt. 47.

The Trustee states that Section 6 of the Debtor's modified plan, Motion, and Declaration all indicate that the Trustee has disbursed $2,348.88 in principal and $1,114.36 in interest to Americredit Financial Services, Inc. in Class 2. Debtor correctly states the amount of principal paid to date, but the amount of interest paid is actually $860.08, not $1,114.36 as stated.

The Trustee states that if this was corrected, he would have no objection.

DEBTOR'S RESPONSE

The Debtor filed a response to the Trustee's objection on December 29, 2014. Dckt. 50. The Debtor admits that Debtor incorrectly listed the amount of interest paid to Class 2 Claim of Americredit Financial Services, Inc. Debtor requests that the plan be confirmed and the amount be corrected in the order confirming.

DISCUSSION

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

In the instant case, the only objection to the proposed plan is a scrivener's error as to the amount of interest that has been paid to Americredit Financial Services, Inc. This error can be easily corrected in the order confirming the plan. Therefore, the court will grant the Motion and have the Debtor correct the amount of interest listed in the plan from $1,114.36 in the order confirming the plan.

The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 16, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan and correct the interest amount paid to Class 2 Claim Americredit Financial Services, Inc. to $860.08, 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.

82. 14-30796-E-13 THERESA WILLIAMS
DPC-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CACIQUE
12-8-14 [15]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 36 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.

Trustee opposes confirmation of the Plan on the basis that:

1. Plan may fail the liquidation analysis. It appears the Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor is proposing a 2.5% dividend to the unsecured creditors in this case, which totals $1,660.00 and the Debtor is paying $5,760.00 to priority unsecured

creditors, which totals $7,420.00. The non-exempt assets listed on Schedule B and C totals $9,047.00. The Following assets are non-exempt:

Schedule B: $4,5000.00 Wells Fargo Checking Account

Schedule C: $4,547.00 U.S. Bank Checking and Savings Account not fully exempted as the Debtor values this at $6,000.00 and exempts only $1,453.00.

The Debtor admitted at the First Meeting of Creditors held on December 4, 2014 that she purchased a modular home in the amount of $48,500.00 prior to the bankruptcy filing in 2014. The Debtor has failed to list this asset on her bankruptcy Schedules.

The Debtor admitted at the First Meeting of Creditors that she received a workers compensation settlement in the amount of $90,000.00. The Statement of Financial Affairs, question #1 reflects that the Debtor received $66,612.00 from a Workers Compensation Claim in 2014, however this conflicts with the Debtor's testimony at the First Meeting of Creditors.

DISCUSSION

On December 15, 2014, the Debtor filed amended Schedule B and C which added the modular home $40,000.00 and also exempted $22,000.00 of the value on Schedule C.

However, these amendments do not address the concerns over whether the proposed Plan can satisfy the liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor has not amended her Statement of Financial Affairs concerning the workers compensation settlement or address the now increased non-exempt assets.

Therefore, because it appears that the Plan would fail the liquidation analysis, 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.

83. 14-30097-E-13 IRVIN/THERESA WHITE MOTION TO CONFIRM PLAN
TLA-3 Thomas Amberg 11-19-14 [32]

Final Ruling: No appearance at the January 13, 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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. 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).

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 deny the Motion to Confirm the Amended Plan.

Irvin and Theresa White ("Debtors") filed the instant Motion to Confirm the Amended Plan on November 19, 2014. Dckt. 32.

TRUSTEE'S OBJECTION

David Cacique, the Chapter 13 Trustee, file an objection to the instant Motion on December 23, 2014. Dckt. 38. The Trustee objects on the following grounds:

1. Plan is not feasible. The Debtor has not proven their ability to make the payments under the plan. The plan payment is insufficient to fund the mortgage payment of Ocwen Loan Servicing, as well as the Class 2 debt, 31% payment to unsecured creditors, and attorney and Trustee fees. Based on the Trustee's calculation, the plan payment must be $2,190.00 per month to complete the plan within 60 months as required by 11 U.S.C. § 1322(d)

Debtors have not indicated or provided in the motion, declaration or exhibits: (1) the date that the Debtors applied for a HAMP Application; (2) A copy of the application submitted and the requested or projected terms; and (3) Any proof that the $1,805.00 payments due for November and December have been paid, where no payments were made 90 days prior to filing according to the Statement of Financial Affairs (Dckt. 1, pg. 31, question 3), and only $301.00 was on hand in Schedule B, pg. 13, items 1&2.

DEBTORS'S RESPONSE

Debtors filed a response to the Trustee's objection on January 5, 2015. Dckt. 43. The Debtors state that they intend to file an amended plan to address the Trustee's concerns. The Debtors request that the court deny the instant Motion without prejudice.

DISCUSSION

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

In light of the Trustee's objections and the Debtors request to have the Motion denied without prejudice so they may file an amended plan, the court denies the Motion.

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.