UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

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

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1. 14-31801-E-13 ANTHONY HARRIS
RAC-1 Pro se

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
12-18-14 [14]

APPEARANCE OF REBECCA CALEY, COUNSEL FOR MOVANT REQUIRED FOR JANUARY 27, 2015 HEARING
Telephonic Appearance Permitted

FAILURE OF COUNSEL TO APPEAR SHALL RESULT IN DENIAL OF THE MOTION AND ISSUANCE OF AN ORDER TO APPEAR, WITH NO TELEPHONIC APPEARANCE PERMITTED

Tentative Ruling: No appearance at the January 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 18, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

BMW Bank of North America, by and through its servicer, BMW Financial

Services NA, LLC (“Movant”) filed the instant Motion to Confirm Termination or Absence of Stay on December 18, 2014. Dckt. 14. The Movant requests that the court issue an order confirming that no stay is in effect pursuant to 11 U.S.C. § 362(c)(4)(A)(ii). Accompanying the Motion is the Declaration of Rebecca Caley.

The Movant argues that two bankruptcy cases were filed by Anthony Harris (“Debtor”) which were pending within the year preceding the petition date in the instant case. The Movant provides the following chart of the Debtor’s prior cases:

DATE FILED	**CASE NO.**	**JUDGE**	**DISMISSED DATE**
October 3, 2014	14-29912	Judge Klein	October 14, 2014
October 20, 2014	14-30708	Judge McManus	November 16, 2014
December 3, 2014	14-21801	Judge Sargis	December 22, 2014 FN.1.

FN.1. The Movant originally had this cell as “Pending.” However, the court dismissed the instant case on December 22, 2014. Dckt. 19. Therefore, the court added the dismissal date to the Movant’s chart.

The Movant states that the first two cases were both dismissed due to the Debtor’s failure to timely file the required schedules and statements.

The Movant argues that the three filings were an abuse of the bankruptcy process in order to intentionally interfere with Movant’s right to pursue recovery of the vehicle financed by Movant.

The Movant asserts that under 11 U.S.C. § 362(c)(4)(A)(ii), no automatic stay came into effect in Debtor’s instant bankruptcy case and is seeking an order confirming such.

The Movant also requests that the court issue an order that the stay shall not be in effect for a period of 365 days from October 3, 2014, in any case filed by, or against the Debtor, unless prior court approval.

APPLICABLE LAW

Under 11 U.S.C. § 362(c)(4)(A)(I), the automatic stay does not go into effect of a later filed case if a debtor has had 2 or more single or joint cases pending within the previous year but were dismissed. A party in interest may request the court to “promptly enter an order confirming that no stay is in effect. 11 U.S.C. § 362(c)(4)(A)(ii).

DISCUSSION

Here, the Movant has established that the Debtor has filed 2 cases that were pending within the previous year but were dismissed. The Debtor filed the first Chapter 7 case on October 3, 2014 (Case No. 14-29912) which was dismissed on October 14, 2014 for Debtor’s failure to timely file filed documents. Case No. 14-29912, Dckt. 16. The Debtors filed the second Chapter 13 case on October

30, 2014 (Case No. 14-30708) which was dismissed on November 17, 2014 for Debtor's failure to timely file documents. Case No. 14-30708, Dckt. 11.

The Debtors have not filed any opposition to the instant Motion.

Congress has provided, as set forth in 11 U.S.C. § 362(c)(4)(A)(I), that no automatic stay went into effect in this case.

Request for Further Injunctive or Statutory Revision Relief in Motion

Buried in Movant's praryer is the request that the court order that "The stay shall not be effective for a period of 365 days from October 3, 2014, in any case filed by, or against the Debtor, unless prior court approval [without specifying which court must provide such approval] is obtained...." Motion, Dckt. 14. The Motion does not state what grounds, with particularity (Fed. R. Bankr. P. 9013), upon which such extraordinary relief is based. The only indication appears to be in the sentence that because of the pattern of repeated filings Movant requests that the automatic stay shall not go into effect in any case filed by the Debtor during any period of time after October 3, 2014.

No Points and Authorities has been filed by Movant support the extraordinary relief of this court barring the automatic stay, as statutorily created by Congress, from ever going into effect. Further, no basis has been shown for this court enjoining all other judges from having any automatic stay in any subsequent bankruptcy case unless this judge gives then authorization to so do.

The court is at a loss to understand what basis that such claims are "warranted by existing law or by nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. See certifications of counsel in pleadings filed with court, Fed. R. Bankr. P. 9011(b)(2). The court notes that Congress has expressly addressed the prospective non-application of the statutory automatic stay in the provisions of 11 U.S.C. § 362(d)(4) and 362(c)(4) [the latter provision discussed above]. Congress provides in 11 U.S.C. § 362(d)(4) that the statutory automatic stay which is mandated to go into effect upon the commencement of any case may be judicially suspended for a period of two years. However, such suspension is limited to (1) application of the automatic stay to specific real property, and (2) a determination that the filing of the bankruptcy petition was part of a "scheme to delay, hinder, or defraud creditors." The "scheme" must involve either (1) the transfer of all or an interest in the specific real property, or (2) multiple bankruptcy filings affecting the specific real property. 11 U.S.C. § 362(d)(4)(A) and (B).

If Congress expressly provides for the judicial suspension of the automatic stay for specific types of property and for limited grounds, the absence of such provision for the personal property at issue indicates that such suspension is not proper.

The request for this additional relief is denied.

The court requires the attendance of counsel at the January 27, 2015 hearing to enlighten the court as to the grounds upon which such relief is based.

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 Confirm Termination or Absence of Stay filed by BMW Bank of North America, by and through its servicer, BMW Financial Services NA, LLC ("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 no automatic stay went into effect upon the commencement of Case No. 14-31801 under the provisions of 11 U.S.C. § 362(c)(4)(A)(I) and BMW Bank of North America, by and through its servicer, BMW Financial Services NA, LLC, their agents, representatives, and successors, and all other creditors having lien rights against the Vehicle, under its security agreement, loan documents granting it a lien in the asset identified as a 2014 BMW 640i ("Vehicle"), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Vehicle to the obligation secured thereby.
>
> No other or additional relief is granted.

2. 12-25302-E-13 MONIQUE KIZER
PGM-1 Peter Macaluso

MOTION TO DISALLOW JACOBY AND MEYERS, L.L. P./MACEY AND ALEMAN ATTORNEY FEES FOR FAILURE TO COMPLETE THE REPRESENTATION AND APPROVAL OF NO LOOK FEES REMAINING DUE TO NEW COUNSEL FOR COMPLETING THESE SERVICES
12-29-14 [36]

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

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

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

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, O.c., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services **is granted.**

Peter Macaluso, Debtor's counsel, filed the instant Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services on December 29, 2014. Dckt. 36.

Mr. Macaluso states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law

Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

The last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Mr. Macaluso argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Mr. Macaluso as he will not be tasked with completing cases without compensation.

In support, Mr. Macaluso cites to Fed. R. Bankr. P. 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Mr. Macaluso then argues that Fed. R. Bankr. P. 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Fed. R. Civ. P. 25 applies to adversary proceedings. What Mr. Macaluso appears to be relying on is Fed. R. Civ. P. 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Mr. Macaluso recognizes that the Fed. R. Civ. P. 25 is not directly on point, he argues that he wises to insure that the substitution of counsel, includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms with new counsel, Mr. Macaluso.

Mr. Macaluso argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Mr. Macaluso alleges that under Local Bankr. R. 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankr. R. 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Mr. Macaluso alleges that the language of the Local Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would be in practice at the time the services contracted for by the Debtor were needed.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 6, 2015.

DISCUSSION

Local Bankr. R. 2016-1(c)(5) is a sound legal basis for the court to grant the relief sought. As stated supra, Local Bankr. R. 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Mr. Macaluso being substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankr. R. 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in March 13, 2012. The Modified Plan was confirmed March 14, 2013. Order, Dckt. 31. The term of the Plan is 60 months.

On August 29, 2014, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on August 29, 2014. Dckt. 32 and 34. It appears that what remains to be done in this case is assist the Debtor in completing the terms of the confirmed plan. The unpaid attorney fees are $1,077.22.

The court disallows the payment of the remaining $1,077.22 in attorneys' fees to prior counsel in this case and allows the $1,077.22 in the remaining No-Look Fees allowed in this case to be paid to Peter C. Macaluso, Debtor's current counsel. The court also allows an additional $150.00 in attorneys' fees to Peter G. Macaluso for the unanticipated and substantial legal services in obtaining this order from the court. The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional 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 Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $1,077.22 of the Fixed Fee previously allowed for prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.

IT IS FURTHER ORDERED that $1,077.22 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Peter G. Macaluso through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $1,077.22 of monies for the balance due on the Fixed Fee approved in this case to Peter G. Macaluso.

IT IS FURTHER ORDERED that Peter Macaluso is awarded an additional $150.00 in attorneys' fees for substantial and unanticipated legal services in prosecuting the present motion. L.B.R. 2016-1(c)(3). The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional fees.

3. 14-29404-E-13 CYNTHIA GREEN — MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
GDG-1 Gary D. Greule — 12-5-14 [25]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Bank of New York Mellon, as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S8 ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Cynthia Green ("Debtor") to value the secured claim of Bank of New York Mellon, as Trustee for CWHEQ Home Equity Loan Asset Backed Certificates, Series 2006-S8 ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 5621 Monte Corita Circle, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of $260,000.00 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. The court notes, however, that Debtor originally believed that the creditor was Nationstar Mortgage, LLC. However, as indicated on Proof of Claim No. 5, it appears that Nationstar Mortgage, LLC is not the creditor but instead the servicing agent. The Debtor has correctly listed the Creditor for purposes of the instant Motion.

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 $289,829.37. FN.2. Creditor's second deed of trust secures a claim with a balance of approximately $6,014.01. 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.

FN.2. The court notes that the Debtor values the first deed of trust in the instant Motion at $276,851.07. Dckt. 25. However, the Declaration of Debtor in Support of the Motion lists the amount of the first deed of trust at $297,752.66, which matches what is listed on the Debtor's Schedule B. Dckt. 1 and 27. Caliber Home Loans, Inc. Filed a Proof of Claim No. 5 on December 4, 2014 which valued the deed of trust at $289,829.37. For purposes of this Motion, the court will use the amount listed on Proof of Claim No. 5.

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 Cynthia Green ("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 Bank of New York Mellon, as Trustee for CWEQ Home Equity Loan Asset Backed Certificates, Series 2006-S8 secured by a second in priority deed of trust recorded against the real property commonly known as 5621 Monte Corita Circle, 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 $260,000.00 and is encumbered by senior liens securing claims in the amount of $289,829.37, which exceeds the value of the Property which is subject to Creditor's lien.

4. 14-29404-E-13 CYNTHIA GREEN
GDG-2 Gary D. Greule

MOTION TO AVOID LIEN OF SPRINGLEAF FINANCIAL SERVICES, INC.
12-5-14 [28]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 22, 2014. By the court's calculation, 36 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 Springleaf Financial Service, Inc., ("Creditor") against property of Cynthia Sheridan Green ("Debtor") commonly known as 5621 Monte Corita Circle, Citrus Heights, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $4,176.13. An abstract of judgment was recorded with **Sacramento** County on September 3, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $260,000.00 as of the date of the petition. The unavoidable consensual liens total $297,752.66 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 Springleaf Financial Service, Inc., California Superior Court for Sacramento County Case No. 34-2013-00156228, recorded on September 3, 2014, Book 20140903 and Page 1256 with the Sacramento County Recorder, against the real property commonly known as 5621 Monte Corita Circle, 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.

5. 14-29404-E-13 CYNTHIA GREEN **MOTION TO CONFIRM PLAN**
GDG-3 Gary Greule **12-5-14 [32]**

No appearance at the January 27, 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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 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). Upon review of the pleadings 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 Plan.

Cynthia Green ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 5, 2014. Dckt. 32.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 5, 2015. Dckt. 38. The Trustee objects on the following grounds:

1.The Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value Collateral of Nationstar and Motion to Avoid Lien of Springleaf, which are set for hearing on January 27, 2015. If the motions are not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

DISCUSSION

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

The court having granted the Debtor's Motion to Value Collateral and Motion to Avoid Lien on January 27, 2015, the Trustee's objections are 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 September 19, 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.

6. 13-31706-E-13 RUDOLPH JUGOZ **MOTION TO MODIFY PLAN**
SJS-1 Scott Johnson **12-19-14 [24]**

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 19, 2014. By the court's calculation, 39 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.

Rudolph Jugoz ("Debtor") filed the instant Motion to Confirm the Modified Plan on December 19, 2014. Dckt. 24.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 31. The Trustee objects on the following grounds:

1. It appears the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent $4,141.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of $56,291.00 have become due. The Debtor has paid a total of $52,150.00 to the Trustee with the last payment posted on December 2, 2014 in the amount of

$2,500.00. The Debtor does not appear to have paid the $4,141.00 payment due December 25, 2014.

DISCUSSION

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

The Trustee's objection is well-taken. The Debtor appears to be delinquent under the terms of the proposed modified plan. The court cannot confirm a plan when the Debtor is delinquent in plan payments, evidencing a failure to comply with the plan. 11 U.S.C. § 1325(a)(6).

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. 06-20808-E-13 PAUL WHELAN
DPC-3 Stephen Koonce

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
12-19-14 [79]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and parties requesting special notice on December 19, 2014. By the court's calculation, 39 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 as to "Post Petition products liability and/or medical malpractice personal injury claim. Settlement value stated at net recovery after legal fees and costs." are disallowed in their entirety.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Exemptions on December 19, 2014. Dckt. 79. The Trustee objects to the Debtor's exemptions on the following grounds:

1. Not clear exemptions claimed: On December 2, 2014, Debtor filed Amended Schedules B and C, adding to #21, a post-petition claim for medical malpractice personal injury claim in which Debtor has received or is to receive a net settlement of $319,000.00. On Schedule C, Debtor claims an exemption of C.C.P. § 704.140 in the amount of $319,000.00.

The Trustee cannot determine if the Debtor is exempting the claim, award, or settlement, and whether the Debtor claims it is exempt under C.C.P. § 704.140(a), (which requires no claim of exemption); C.C.P. § 704.140(b) which allows a claim of an award or settlement to the extent necessary for support, or whether it is a settlement payable periodically and therefore limited in exemption to 65% under C.C.P. § 704.140(d).

2. Insufficient information relating to property. No case number or dates are included in the description of the property on Schedule B and C, and while the property is characterized as a "claim," it is also stated that,

"Settlement value stated at net recovery after legal fees and costs." Dckt. 78, Schedule B, pg. 5.

DISCUSSION

The Trustee's objections are well-taken. A review of the Amended Schedule B and C shows the addition of the "Post Petition products liability and/or medical malpractice personal injury claim. Settlement value stated at net recovery after legal fees and costs." Dckt. 76.

Looking at the Amended Schedule C, the Debtor merely cites to C.C.P. § 704.140 as the "Specific Law Providing Each Exemption." However, the section cited by Debtor contains multiple subsections and requirements. It is not the court's duty nor the Trustee's to "fill-in-the-blanks" for the Debtor. Without more specifics, as required by Schedule C, as to what specific claim to exemption the Debtor is arguing applies, the court disallows the exemption.

Furthermore, the Debtor, as the Trustee highlights, does not reference a case number, dates, total value, attorneys fees, etc that are necessary to determine whether the "claim" is entitled to exemptions. Even if the Debtor did properly cite to a specific law for the alleged exemption, without more information, the court nor the Trustee can determine if that exemption would actually be applicable.

Therefore, 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 as to the "Post Petition products liability and/or medical malpractice personal injury claim. Settlement value stated at net recovery after legal fees and costs" are disallowed in their entirety.

8. 11-26509-E-13 PGM-1 | **NEIL MCSHANE AND ELAINE GREGORY**
Peter Macaluso | **MOTION TO DISGORGE FEES AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)**
12-29-14 [130]

Final Ruling: No appearance at th January 27, 2015 hearing is required.

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

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

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, O.c., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services is granted.

Peter Macaluso, Debtor's counsel, filed the instant Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services on December 29, 2014. Dckt. 130.

Mr. Macaluso states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

The last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Mr. Macaluso argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Mr. Macaluso as he will not be tasked with completing cases without compensation.

In support, Mr. Macaluso cites to Fed. R. Bankr. P. 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Mr. Macaluso then argues that Fed. R. Bankr. P. 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Fed. R. Civ. P. 25 applies to adversary proceedings. What Mr. Macaluso appears to be relying on is Fed. R. Civ. P. 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Mr. Macaluso recognizes that the Fed. R. Civ. P. 25 is not directly on point, he argues that he wises to insure that the substitution of counsel, includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms with new counsel, Mr. Macaluso.

Mr. Macaluso argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Mr. Macaluso alleges that under Local Bankr. R. 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankr. R. 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Mr. Macaluso alleges that the language of the Local Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would

be in practice at the time the services contracted for by the Debtor were needed.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 6, 2015.

DISCUSSION

Local Bankr. R. 2016-1(c)(5) seems to offer a sound legal basis for the court to grant the relief sought. As stated supra, Local Bankr. R. 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Mr. Macaluso being substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankr. R. 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in March 15, 2011. The Modified Plan was confirmed December 12, 2011. Order, Dckt. 117. The term of the Plan is 60 months.

On April 13, 2014, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on April 27, 2014. Dckt. 125 and 127. The unpaid attorney fees are $243.09.

The court disallows the payment of the remaining $243.09 in attorneys' fees to prior counsel in this case and allows the $243.09 in the remaining No-Look Fees allowed in this case to be paid to Peter C. Macaluso, Debtor's current counsel. The court also allows an additional $150.00 in attorneys' fees to Peter G. Macaluso for the unanticipated and substantial legal services in obtaining this order from the court. The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional 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 Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $243.09 of the Fixed Fee previously allowed for prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.

IT IS FURTHER ORDERED that $243.09 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Peter G. Macaluso through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $243.09 of monies for the balance due on the Fixed Fee approved in this case to Peter G. Macaluso.

IT IS FURTHER ORDERED that Peter Macaluso is awarded an additional $150.00 in attorneys' fees for substantial and unanticipated legal services in prosecuting the present motion. L.B.R. 2016-1(c)(3). The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional fees.

9. 14-20512-E-13 VIRAB/EVA ABRAMYAN
PGM-3 Peter Macaluso

CONTINUED MOTION TO CONFIRM PLAN
10-6-14 [63]

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 October 6, 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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Virab and Eva Abramyan ("Debtors") move to confirm their Third Amended Plan, which will last 60 months and pay no less than a 100% dividend to general unsecured creditors.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to this Motion on November 4, 2014. Dckt. 69. The Trustee objects to confirmation on the basis that the Plan and Debtors' petition are not in god faith. The Trustee is uncertain if Debtors have filed their Amended Plan and petition in good faith because Debtors appear to have significantly undervalued their real property (through statements under penalty of perjury in the Schedules) until after the bar date for creditors to file claims. This is also Debtors' third case in a series, preceded by Case Nos. 11-29032 and 10-47884.

When Debtors filed their petition on January 20, 2014, Debtors listed their residence at 4201 California Ave, Carmichael, California with a value of $225,000.00 on Schedule A and secured claims totaling $182,000.00. This left Debtors with $43,000.00 in equity, which Debtors exempted completely on Schedule C. The Trustee noticed that on Schedule D, Debtors reported the value of their residence at $320,000.00, which does not match the value reported on Schedule A.

At the First Meeting of Creditors, the Trustee expressed a potential objection to confirmation of the Debtors' plan, and the Debtors filed an amended plan on March 3, 2014. On April 8, 2014, the Trustee filed an objection to the first amended plan, objecting on the basis that Debtors failed to list all debts and that the plan did not meet the liquidation analysis. The Trustee also questioned the valuation of the house at $225,000.00, as it seemed unreasonably low when compared to the Sacramento County Assessor's value of $487,425 as of September 2013.

After the Trustee's objection was sustained, the Debtors filed a second amended plan on July 17, 2014, which added the Debtors' second deed of trust on their residence. The Plan indicated that the claim was paid in full on September 21, 2012 and the creditor had failed to release the lien. The Trustee again filed an opposition to the second amended plan, based on his concerns about the liquidation analysis that were not addressed in the new plan. The Trustee also alleged that Debtors failed to provide adequate information about the valuation of their home. In response, Debtors filed specifics of their home, including square footage, and admitted that the original value listed on Schedule A was a "scriber's error" and the value should have been $320,000.00. This value reduces Debtors' exemption to $17,308.36.

Debtors then filed an amended Schedule A that listed the value of their real property at $725,000.00, a $500,000.00 difference from the original value listed. That would leave Debtors with $442,000.00 in equity. The Third Amended Plan is now a 60 month plan that will pay 100%. Amended Schedule I now shows that Debtors receive $875 in Social Security Income for their mother. Although Debtors have listed their mother as a dependent since the inception of this case, they are only now disclosing that they receive this additional household income.

The Trustee argues that Debtors have benefitted by undervaluing their residence because it created a disincentive to file claims. Specifically, the Trustee points out that Debtors listed $177,389.99 in unsecured claims on Schedule F, but only about 5% of those claims were filed – a total $35,296.98. The time for unsecured creditors has long passed. Debtors could have filed claims for their creditors, but did not do so.

NOVEMBER 18, 2014 HEARING

At the November 18, 2014 hearing, the court continued the hearing to January 27, 2015 at 3:00 p.m. to allow the Trustee and Debtors' counsel to prepare amendments and filed supplemental evidence. Dckt. 74.

To date, no supplemental pleadings have been filed, other than a Supplemental Declaration by Debtors. Dckt. 75. Debtors testify that English is their second language and "we do not always understand what we are asked."

They further testify that,

A. They purchased their home in 2007 for $220,000.

B. In Debtors' first bankruptcy case (in which they were represented by the same counsel as in the present case), Debtors valued their home at $160,000. Case No. 10-47884.

C. In Debtors' second bankruptcy case (in which they were represented by the same counsel as in the present case), Debtors valued their home at $160,000. Case No. 11-29032.

D. When the second bankruptcy case was dismissed, Debtors state that a second deed of trust securing a debt of $40,000 was waived and forgiven as part of a loan modification.

E. This third bankruptcy case (in which the Debtors are represented by the same counsel as in the prior two cases which have been dismissed by the court) has been filed for the stated purpose of "reorganizing our debts."

In the second bankruptcy case the Chapter 13 Trustee filed a motion to dismiss because Debtors were $7,400 delinquent in their plan payments. The Debtors did not oppose the dismissal of the second bankruptcy case. Civil Minutes, 11-29032 Dckt. 30. In the second bankruptcy case proofs of claims for unsecured claims totaling $86,956.22 were filed. Official Registry of Claims, *Id.* This is approximately 50% of the amount of unsecured claims listed on Schedule F by Debtors in the second bankruptcy case. *Id.* Dckt. 1.

In the first bankruptcy case the Chapter 13 Trustee filed a motion to dismiss because Debtors were $21,000 delinquent in their plan payments. 10-147884 Dckt. 43; Order, Dckt. 51. In the first bankruptcy case proofs of claims for unsecured claims totaling $105,439.56 were filed. Official Registry of Claims, *Id.* This is approximately 64% of the amount of unsecured claims listed on Schedule F by Debtors in the second bankruptcy case. *Id.* Dckt. 13.

In the first bankruptcy case, Debtors' Plan provided for a 0.00% dividend to creditors holding general unsecured claims. 10-147884, Dckt. 12. No Chapter 13 Plan was confirmed in the first bankruptcy case.

In the second bankruptcy case Debtors provided for a 33.94% dividend on a projected $209,541.37 of general unsecured claims. 11-29032, Dckt. 5. No Chapter 13 Plan was confirmed in the second bankruptcy case.

The Amended Plan now before this court provides for a 100% dividend on a projected $35,296.98 in general unsecured claims. Dckt. 65. The proofs of claim for unsecured claims in this case total $38,085.41. Official Registry of Claims in this bankruptcy case.

For the Amended Plan before the court the monthly plan payments are $700.00. This is greatly reduced from the $7,400.00 a month in the Plan filed by the Debtors in the second bankruptcy case and the $7,000.00 a month in the Plan filed by the Debtors in the first bankruptcy case.

In the second bankruptcy case Debtors represented to the court under penalty of perjury that they had $10,861.35 in Average Monthly Income (after payroll taxes and Social Security deductions). 11-29032, Schedule I, Dckt. 1. On Schedule J Debtors stated under penalty of perjury that they had expenses of only $3,461.35. *Id.* This left them $7,400.00 a month to fund a plan.

In the present bankruptcy case the Debtors Combined Monthly Income (after payroll deductions) has dropped to $4,400.32. All monthly rental income and other family support have been deleted. Schedule I, Dckt. 68. Debtors' expenses have grown to $4,574.40 (it appearing that this has occurred because the Debtors now include a mortgage or rent payment on Schedule J, while in the prior case the mortgage payment was to be made through the plan). The major difference is that Schedule I in the current case no longer shows $4,200.00 a month in net monthly rental income. (The Amended Plan in the current case4 provides for surrendering the two rent income producing properties).

DISCUSSION

The Debtors' lack of candor and truthful statements under penalty of perjury are troubling. Debtors commenced their first Chapter 13 Case, with the assistance of current counsel, on October 20, 2010. 10-47884. On Schedule A Debtors stated that the value of the California Avenue Property was only $160,000.00, which was less than the lien listed on Schedule A. 10-47784 Dckt. 13 at 11. On Schedule D the creditor is listed as "Bac Home Loans Servici," but only for a $44,611.00 debt second by a "2ND DOT." *Id.* at 16. This First Bankruptcy Case was dismissed by order of the court on March 19, 2011. *Id.*, Dckt. 51. The Chapter 13 Trustee requested the dismissal based on Debtors being $21,000.00 delinquent under the plan in that case. Motion to Dismiss, *Id.*, Dckt. 39. The proposed plan in the First Chapter 13 case does not provide for the payment of any claim secured by the California Avenue Property except for the "Bac Home Loans Servici" claim. Plan, Dckt. 12.

Debtors filed their second Chapter 13 case, again with the assistance of the same counsel as in the present case and the first case, on April 11, 2011. 11-29032. Debtors continue to state under penalty of perjury on Schedule A that the California Avenue Property has a value of $160,000.00 and is subject to a lien in the amount of $194,488.00. 11-29032, Dckt. 1 at 18. On Schedule D Debtors again only list "Bac Home Loans Servici" as the creditor having a claim secured by the California Avenue Property, in the amount of $44,611.00. The Second Bankruptcy Case was dismissed due to the Debtors being $7,400.00 in default in plan payments. The proposed plan in the Second Chapter 13 case does not provide for the payment of any claim secured by the California Avenue Property except for the "Bac Home Loans Servici" claim. Plan, *Id.*, Dckt. 5.

Debtors commenced this current, their third, Chapter 13 Bankruptcy case, with the assistance of the same counsel as in the two prior cases, on January 20, 2014. On Schedule A Debtors now state that the California Avenue Property has a value of $225,000.00 and is subject to lines of $182,000.00. Dckt. 1 at 18. On Schedule A in this Third Bankruptcy Case Debtors now state that Bank of America, N.A. has a claim in the amount of $182,000.00 which is secured by the California Avenue Property. *Id.* at 23. As noted above, on Schedule D Debtors state under penalty of perjury that this Property has a value of $320,000.00. Though stated to be a "scrivener's error," Debtors reviewed the Schedules and signed them under penalty of perjury. (The review

and filing of bankruptcy schedules are not a new or foreign concept to Debtors, having experience in bankruptcy cases from their prior two cases.)

In the Original Chapter 13 Plan Debtors provided for a secured claim, with monthly payments of $1,449.04, and a second secured claim with payments of $225.00 to be paid as a Class 4 Claim. The collateral for the two secured claims is the California Avenue Property. These payments do not match in dollar amount to any secured claims to be paid through the Chapter 13 Plans in the First or Second Bankruptcy cases.

In the First Amended Plan filed in this case, the payment of the $225.00 for the Class 4 Claim disappears. Dckt. 22. In the Second Amended Plan the debt corresponding to the $225.00 a month payment reappears as a Class 2 claim to be valued at $1.00. Dckt. 48. The Additional Provisions of the Second Amended Plan states that Bank of America Home Loans was paid on the Class 2 claim in full on September 21, 2012.

In the Second Amended Plan the Debtors propose to seek out a 1.5% dividend for creditors holding general unsecured claims. For the projected $216,277.05 in unsecured claims this would total $3,244.26 over the three years of the Second Amended Plan.

On October 6, 2014, the Debtors filed an Amended Schedule A which now lists the California Avenue Property to have a value of $725,000.00, and is subject to liens of $182,001.00. Dckt. 68 at 4.

Contrary to Debtors' protestations that the Trustee has provided no evidence that the Debtors undervalued the property until the eve of the hearing on the Motion to Confirm the Third Amended Plan, the Trustee has presented substantial evidence – the Debtors' own statements of value under penalty of perjury.

It is the Debtors who offer no evidence to explain how they have made such conflicting statements under penalty of perjury as to the value of the California Avenue Property. It does not appear to be mere inadvertence that it is only counsel who is sent in to argue against the Trustee's evidence. Rather, given that Debtors argue the absence of evidence, it appears that Debtors are intentionally avoiding providing any testimony under penalty of perjury of the now 322% ballooning of the California Avenue Property value in the past ten months based on the conflicting statements under penalty of perjury by the Debtors.

While the Debtors now propose to pay 100% of the general unsecured claims, the court agrees with the Trustee that this is after they have "gamed the system" to mislead creditors as to the value of the Debtors' assets. Debtors state on Schedule F that they have $232,811.88 in general unsecured claims. Dckt. 33 at 5-15. The creditors appear to be the type, if they received notice of the bankruptcy case, proofs of claim would be filed if, based on the information provided in the schedules, indicate a likelihood of payments.

The Debtors have not prosecuted this case, have not proposed the Chapter 13 Plan, and have not attempted to restructure their debt in good faith. The information stated in the Schedules under penalty of perjury was grossly inaccurate. The Debtors offer no explanation and fail to provide the

court with credible (or any) testimony under penalty of perjury as to how they could have so grossly understated the value of the California Avenue Property.

The Debtors' credibility, and good faith, is further impaired by the inconsistent disclosure of claims in the prior bankruptcy cases. The Bank of America, N.A. claim to be paid as a Class 4 Claim in this case was not ever listed in the prior cases. The Debtors have demonstrated by their own conduct that they disclose only what information they believe to be to their benefit, and make statements under penalty of perjury or in documents filed with the court (all of which are subject to Fed. R. Bankr. P. 9011) without regard to the truthfulness of the information – so long as it allows them to achieve an advantage in the bankruptcy case.

Even after offering the Debtor the opportunity to provide supplemental pleadings, nothing has been filed in this case since the court continued the matter back in November 2014.

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.

10. 14-31014-E-13 ROBERT SLAMA
DPC-1 Scott Johnson

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-23-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 23, 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.

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

1. Motion to Value Collateral Denied: The Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor's plan (Dckt. 5) proposes to value the secured claim of Heritage Community Credit Union in Class 2C, however, the Debtor's Motion to Value Collateral was heard and denied by the court on December 16, 2014. Dckt. 30.

2. Not Best Effort: Debtor's plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is above median income. Form 22c (Dckt. 1, pgs. 42-50) shows net Disposable Monthly Income on line 59 of

$4,806.36. Debtor's plan proposes to pay $1,225.00 for 60 months, paying 100% to unsecured claims. Debtor's Schedule J, line 23c shows net disposable income of $5,051.48 per month, which is $3,826.48 more than the proposed plan payment. Where the plan is effective on confirmation and unsecured creditors are not paid in full on that date, interest appears to be required to pay the present value to unsecured claims.

The Trustee's objections are well-taken. The Motion to Value the Collateral of Heritage Community Credit Union was denied on December 16, 2014. The proposed plan was contingent on the valuation of the claim being granted. Therefore, without the Heritage Community Credit Union claim being valued, the proposed plan is not feasible.

Additionally, the discrepancy in the disposable monthly income and the proposed monthly plan payments raises questions of Debtor's candidness and whether the plan is, in fact, the Debtor's best interest as required under 11 U.S.C. § 1325(b).

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.

11. 10-39217-E-13 DPC-3 STEPHEN/ELIZABETH DICKSON Guy Chism

OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
12-15-14 [214]

Tentative Ruling: 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).

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 and Debtor's Attorney on December 15, 2015. By the court's calculation, 43 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). The defaults of the non-responding parties and other parties in interest are entered.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Exemptions on December 15, 2014. Dckt. 214. The Trustee objects to the Debtor's exemptions on the following grounds:

1. On December 1, 2014, the Debtors filed an amended Schedule C (Dckt. 207, pg. 7) which has a signature page reflecting the signature of "Elizabeth A Dickson (Deceased)"; no scanned signature is present. The Trustee objects to the claim of exemptions unless the original signed document is produced for review pursuant to Local Bankr. R. 9004-1(c)(1)(D)(1)

2. On December 1, 2014, Debtors filed an amended Schedule B and C (Dckt. 207) disclosing interest in 3 new or previously undisclosed claims/assets. On #9, Debtors add "term life insurance described as a monthly deduction of $28.50" with a value of "unknown." On #11, Debtors add Mandatory

Retirement thru employer Econco, described as monthly deduction of $322.32 with a value "unknown" and also Private retirement plan described as monthly deduction of $144.19 with a value of "unknown." Exemptions are claimed at 100% pursuant to C.C.P. §§ 703.140(b)(7) and (10)(E), without disclosing any value or indication as to the amount of proceeds collected since this case was filed on July 21, 2010. No account numbers or agencies holding these properties are specified, so arguably the Debtors have not adequately identified the properties they are exempting.

3. The Trustee objects to the claimed exemption on term life insurance as not allowed by law. On Schedule C (Dckt. 207, pg. 7), Debtors' claims exemption C.C.P. § 703.140(b)(7) claiming 100% of unknown value of the life insurance policy. Debtors are claiming the § 703.140(b)(7) which allows exemption for any unmatured life insurance contract owned by the Debtors, other than a credit life insurance contract. Any life insurance contract for Elizabeth Dickson appears matured.

4. On Schedule C (Dckt. 207, pg. 7), Debtor claim exemption C.C.P. § 703.140(b)(10)(E) claiming 100% of unknown value of the retirement through Econco. Under 703.140(b)(10)(E), the debtor's right to receive a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. In this circumstance, the Debtor has not exhibited for whom the exemption is reasonably necessary and therefore may not be entitled the exemption, where income and expenses have been projected on Schedule I and J and do not require the proceeds.

5. On Schedule C (Dckt. 207, pg. 7), Debtor claims exemption C.C.P. § 703.140(b)(10)(E) claiming 100% of unknown value of the private retirement plan without identifying the plan. Under 703.140(b)(10)(E), the debtor's right to receive a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

In this circumstance, the Debtor has not exhibited for whom the exemption is reasonably necessary and therefore may not be entitled the exemption, where income and expenses have been projected on Schedule I and J and do not require the proceeds, and in the event that this "private retirement plan" was the deceased debtor's plan.

DEBTORS' RESPONSE

The Debtors' counsel filed a response to the Trustee's objections on January 13, 2015. Dckt. 220. The Debtors' counsel respond as follows:

1. Debtors' counsel and the counsel for the Trustee met and conferred by phone on the objections.

2. Trustee's counsel and Debtors' counsel concluded there were errors in the filing of amendments which triggered these objections. Said errors are currently being fixed with new amendments and a debtor's declaration. Both are forthcoming such that the court should be able to resolve the issue before it via tentative ruling absent a withdrawal of objection by Trustee.

3. Debtors' counsel will obtain a sworn declaration informing the court of the circumstances around the matured life insurance policy and the proceeds therein. Counsel will also amend retirement account assets and correct exemptions to properly reflect balances that can be rightly exempted.

4. Debtor will also manually sign all amendments and declaration and properly sign as representative of his deceased wife's estate to avoid further confusion over improperly submitted e-signatures.

5. Those corrected amendments and Debtor's declaration should be on file by January 16, 2015 giving Trustee's counsel time to review and make any other objections, if any, prior to the hearing date of January 27, 2015. I am confident the amendments and changes should result in a withdrawal of objection by the Trustee.

DISCUSSION

The Trustee's objections are well-taken. A review of the Amended Schedule B and C shows the addition of these previously undisclosed accounts and does not properly explain how those retirement accounts are exempted. Without listing the value or the proper account types, the court and the Trustee cannot determine if the Debtors are entitled to such exemptions.

Furthermore, the Debtors, through counsel, admit to errors. While Debtors' counsel promised supplemental pleadings and corrects by January 16, 2015, nothing new (as of the court's January 22, 2015 review) has been filed in connection with the instant case.

Therefore, 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.

12. 10-39217-E-13 STEPHEN/ELIZABETH DICKSON MOTION TO MODIFY PLAN
GDC-2 Guy Chism 11-28-14 [201]

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 deny the Motion to Confirm the Modified Plan.

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

TRUSTEE'S OBJECTIONS

David Cusick, 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.

JANUARY 13, 2015 HEARING

At the hearing, the court continued 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).

DISCUSSION

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

No supplemental declarations have been filed in connection with the instant Motion.

The court on January 27, 2015 sustained the Trustee's Objection to Debtor's Claims of Exemptions. Dckt. 214. Because the proposed Plan is contingent on the Debtors' use of the exemptions as to the retirement and the court sustained the Trustee's objection, the plan is not feasible.

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.

13. 14-27117-E-13 SJS-2 ANTHONY/GWENDOLYN LAND Scott Johnson

MOTION TO CONFIRM PLAN
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.

JANUARY 13, 2015 HEARING

At the January 13, 2015 hearing, the court continued the hearing to 3:00 p.m. on January 27, 2015.

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

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.

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.

14.	**14-29023-E-13 SJS-1**	**DARREN CARTER AND AMY ALEXANDER-CARTER Scott Johnson**	**MOTION TO CONFIRM PLAN 12-15-14 [26]**

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 15, 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.

Darren and Amy Carter ("Debtors") filed the instant Motion to Confirm the Amended Plan on December 15, 2015. Dckt. 26.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 32. The Trustee objects on the following grounds:

1. Debtors may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtors' Declaration in support of the instant Motion (Dckt. 29) indicates on pg. 3, lines 6-8 that Debtor Darren Carter is no longer employed and that an amended Schedule I has been filed. No amended Schedule I appears in the court record The Declaration fails to mention any other source of income for Mr. Carter, such as unemployment benefits or family assistance. The Trustee is not certain how Mr. Carter can meet his living expenses, even with reducing those expenses as detailed in the Declaration.

The current plan (Dckt. 28) calls for a step increase of $971.00 in month fifteen, and the Declaration indicates that Debtor expects to be able to fund this increase by finding new employment (Dckt. 29, pg. 3, lines 6-7).

The Trustee is concerned that Debtors will not be able to fund the plan where one Debtor is not employed, Debtors maintain two separate households and have two children to support (Schedule I, Dckt. 1, pgs. 27-30).

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 docket shows that no amended or supplemental Schedules I and J have been filed. Under the terms of the proposed plan, it does not appear that the Debtors can make the plan payments given the current unemployment of Debtor. Without more information justifying the terms of the proposed plan, the plan does not appear to be feasible.

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.

15. 14-31924-E-13 CATHERINE COLLINS **MOTION TO VALUE COLLATERAL OF**
SDB-1 **JP MORGAN CHASE**
12-30-14 [15]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 30, 2014. By the court's calculation, 28 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 JP Morgan Chase Bank, National Association ("Creditor") is denied without prejudice.

The Motion to Value filed by Catherine Collins ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration.

However, a review of the Proof of Service shows that the Debtor did not serve David Cusick, the Chapter 13 Trustee. Instead, Debtor improperly served Jan Johnson, another Chapter 13 Trustee in the district but not the Trustee assigned to the instant case. Because the Debtor did not serve all necessary parties, the Motion is denied without prejudice.

The court would also request that Debtor and Debtor's counsel in the future format the Proof of Service in a way that makes it easier to identify the parties served. Separating the parties served by distinct numbering or tabbing allows the court to ensure that all necessary parties are properly served.

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 Catherine Darby Collins ("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

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

ALTERNATIVE RULING

The Motion to Value filed by Catherine Collins ("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 2166 Bridgeport Avenue, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $149,000.00 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $173,043.96. Creditor's second deed of trust secures a claim with a balance of approximately $21,990.00. 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 Catherine Darby Collins ("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 JP Morgan Chase Bank, National Association secured by a second in priority deed of trust recorded against the real property commonly known as 2166 Bridgeport Avenue, 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 $149,000.00 and is encumbered by senior liens securing claims in the amount of $173,043.96, which exceeds the value of the Property which is subject to Creditor's lien.

16. 14-30925-E-13 JAMES KENNEDY **MOTION TO CONFIRM PLAN**
TLA-2 Thomas Amberg **12-15-14 [26]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 44 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 December 15, 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.

17. 12-26830-E-13 DAVID/LINDA ESCOBAR
PGM-1 Peter Macaluso

MOTION TO DISALLOW JACOBY & MEYERS, LLP/MACEY & ALEMAN DBA LEGAL HELPERS, P.C., ATTORNEY FEES FOR FAILURE TO COMPLETE THE REPRESENTATION AND APPROVAL OF NO LOOK FEES REMAINING DUE TO NEW COUNSEL FOR COMPLETING THESE SERVICES
12-29-14 [167]

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

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

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

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, O.c., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services is granted.

Peter Macaluso, Debtor's counsel, filed the instant Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees

Remaining to New Counsel for Completing These Services on December 29, 2014. Dckt. 167.

Mr. Macaluso states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

The last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Mr. Macaluso argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Mr. Macaluso as he will not be tasked with completing cases without compensation.

In support, Mr. Macaluso cites to Fed. R. Bankr. P. 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Mr. Macaluso then argues that Fed. R. Bankr. P. 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Fed. R. Civ. P. 25 applies to adversary proceedings. What Mr. Macaluso appears to be relying on is Fed. R. Civ. P. 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Mr. Macaluso recognizes that the Fed. R. Civ. P. 25 is not directly on point, he argues that he wises to insure that the substitution of counsel, includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms with new counsel, Mr. Macaluso.

Mr. Macaluso argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Mr. Macaluso alleges that under Local Bankr. R. 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankr. R. 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Mr. Macaluso alleges that the language of the Local Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would be in practice at the time the services contracted for by the Debtor were needed.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 6, 2015.

DISCUSSION

Local Bankr. R. 2016-1(c)(5) seems to offer a sound legal basis for the court to grant the relief sought. As stated supra, Local Bankr. R. 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Mr. Macaluso being substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankr. R. 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in April 7, 2012. The Modified Plan was confirmed July 10, 2013. Order, Dckt. 159. The term of the Plan is 60 months.

On August 29, 2014, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on August 29, 2014. Dckt. 164 and 166. It appears that what remains to be done in this case is assist the Debtor in completing the terms of the confirmed plan. The unpaid attorney fees are $1,371.10.

The court disallows the payment of the remaining $1,371.10 in attorneys' fees to prior counsel in this case and allows the $1,371.10 in the remaining No-Look Fees allowed in this case to be paid to Peter C. Macaluso, Debtor's current counsel. The court also allows an additional $150.00 in attorneys' fees to Peter G. Macaluso for the unanticipated and substantial

legal services in obtaining this order from the court. The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional 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 Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $1,371.10 of the Fixed Fee previously allowed for prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.
>
> **IT IS FURTHER ORDERED** that $1,371.10 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Peter G. Macaluso through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $1,371.10 of monies for the balance due on the Fixed Fee approved in this case to Peter G. Macaluso.
>
> **IT IS FURTHER ORDERED** that Peter Macaluso is awarded an additional $150.00 in attorneys' fees for substantial and unanticipated legal services in prosecuting the present motion. L.B.R. 2016-1(c)(3). The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional fees.

18. 11-27338-E-13 RAJ PAHWA **MOTION TO MODIFY PLAN**
PGM-1 Peter Macaluso **12-23-14 [26]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 23, 2014. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 23, 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.

19. 14-31139-E-13 KAMELA BROWN
DPC-1 Gary Greule

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-23-14 [20]

No appearance at the January 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 23, 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.

Upon review of the pleadings the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

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

1. The Debtor cannot make the payment sunder the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of Schools Financial Credit Union on 2010 Toyota Tacoma but has failed to file a Motion to Value Collateral to date.

2. Debtor's plan fails to provide for the secured debt of Springleaf Financial Services. Debtor lists this debt as unsecured on Schedule F (Dckt. 1, pg. 19). Creditor has filed a secured claim for $1,500.00 (Proof of Claim no. 1-1). The debt should be listed on Schedule D as secured and provided for in Class 2 of the plan. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment of a creditor.

3. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I (Dckt. 1, pgs. 22-23) indicates that Debtor is employed by the City of Sacramento. The Schedule does not list any retirement contributions on 5b or 5c. A review of Debtor's pay advices shows a retirement deduction of $123.31 bi-weekly. Debtor's net income as listed on Schedule I is not accurate.

DEBTOR'S NON-OPPOSITION

The Debtor filed a non-opposition on January 13, 2015. Dckt. 47. The non-opposition states that a First Amended Chapter 13 Plan has been filed and a confirmation hearing is set for February 10, 2015.

DISCUSSION

The Trustee's objections are well-taken. The Debtor's plan relies on a Motion to Value which has yet to be filed. The plan may not be feasible given the failure to list a secured claim of Springleaf Financial Service. Lastly, the Debtor's Schedule I does not show the retirement deduction listed on her pay stubs, which raises concerns over whether the Debtor can afford the proposed plan payments.

Furthermore, the Debtor has consented to the Trustee's objections by filing a non-opposition.

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.

20. 14-31139-E-13 KAMELA BROWN
RTD-1 Gary Greule

OBJECTION TO CONFIRMATION OF PLAN BY SCHOOLS FINANCIAL CREDIT UNION
12-27-14 [25]

No appearance at the January 27, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 27, 2014. By the court's calculation, 31 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 pleadings the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

Schools Financial Credit Union ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Chapter 13 Plan is not feasible. First, the plan is not feasible because the total of the proposed payments exceeds the proposed plan payment by the sum of $26.50. Second, the proposed dividend to Creditor is insufficient. Third, the plan fails to provide for the secured claim of Springleaf Financial Services. Fourth, the plan depends on a motion to value the secured claim of the Creditor that has yet to be filed. Lastly, the Debtor is unable to afford the plan.

2. The plan does not comply with 11 U.S.C. § 1325(a)(5) because the dividend of $300.00 is insufficient to pay the principal amount of $31,097.51, plus interest at the rate of 4.990% from October 23, 2014 to November 12, 2014 and interest at 4.5% after November 12, 2014. The Creditor does not consent to the dividend nor to the value of $19,605.00 for the value of its security.

DEBTOR'S NON-OPPOSITION

The Debtor filed a non-opposition on January 13, 2015. Dckt. 47. The non-opposition states that a First Amended Chapter 13 Plan has been filed and a confirmation hearing is set for February 10, 2015.

DISCUSSION

The Creditor’s objections are well-taken. The Debtor’s plan relies on a Motion to Value which has yet to be filed. The plan may not be feasible given the failure to list a secured claim of Springleaf Financial Service. Lastly, the Debtor’s plan does not seem to properly provide for Creditor’s claim.

Furthermore, the Debtor has consented to the Trustee’s objections by filing a non-opposition.

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

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

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

21. 14-28141-E-13 ELIZABETH SPEARS MOTION TO CONFIRM PLAN
MRL-1 Mikalah Liviakis 12-10-14 [38]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 10, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 23, 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.

22. 11-20344-E-13 RONALD/JULIA ALVEY — MOTION TO MODIFY PLAN
WW-3 Mark Wolff — 12-18-14 [49]

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 18, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

Ronald and Julia Alvey ("Debtors") filed the instant Motion to Confirm the Modified Plan on December 18, 2014. Dckt. 49.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 57. The Trustee objects on the following grounds:

1. The order confirming plan (Dckt. 21) filed on March 8, 2011 reflects attorney fees $2,500.00 shall be paid through the Chapter 13 plan; the proposed plan lists attorney fees as $3,500.00 to be paid through this plan.

The Statement of Financial Affairs reflects $1,000.00 paid to the attorney before filing (Dckt. 1, pg. 42, question 9), and the Disclosure Statement agreed fees were $3,500.00 with $1,000.00 paid previous (Dckt. 1, pg. 10).

DISCUSSION

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

The Trustee's objection is well-taken. It does appear that the proposed plan misstates what amount of attorney fees should be paid through the plan. However, since this appears to be a mere scrivener's error, the court will grant the instant Motion and allow the Debtors to correct the amount of attorney fees to be paid through the plan from $3,500.00 to $2,500.00. The correction shall be stated as a plan amendment 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 December 18, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, with a plan amendment stating the amount of attorneys fees to be paid through the plan to be $2,500.00, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. 12-32244-E-13 SHANE/YAMILETH SHANNON MOTION TO MODIFY PLAN
RAC-2 Richard Chan 12-16-14 [49]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, 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, 41 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 December 16, 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.

24. 12-20846-E-13 SALVADOR/AUDRA ACOSTA
PGM-2

MOTION TO DISALLOW JACOBY & MEYERS, L.L.P./MACEY & ALEMAN DBA LEGAL HELPERS, P.C. ATTORNEY FEES FOR FAILURE TO COMPLETE THE REPRESENTATION AND/OR MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
12-29-14 [132]

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

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

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

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, O.c., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services is granted.

Peter Macaluso, Debtor's counsel, filed the instant Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services on December 29, 2014. Dckt. 132.

Mr. Macaluso states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

The last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Mr. Macaluso argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Mr. Macaluso as he will not be tasked with completing cases without compensation.

In support, Mr. Macaluso cites to Fed. R. Bankr. P. 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Mr. Macaluso then argues that Fed. R. Bankr. P. 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Fed. R. Civ. P. 25 applies to adversary proceedings. What Mr. Macaluso appears to be relying on is Fed. R. Civ. P. 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Mr. Macaluso recognizes that the Fed. R. Civ. P. 25 is not directly on point, he argues that he wises to insure that the substitution of counsel, includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms with new counsel, Mr. Macaluso.

Mr. Macaluso argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Mr. Macaluso alleges that under Local Bankr. R. 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankr. R. 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Mr. Macaluso alleges that the language of the Local Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would be in practice at the time the services contracted for by the Debtor were needed.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 5, 2015.

DISCUSSION

Local Bankr. R. 2016-1(c)(5) seems to offer a sound legal basis for the court to grant the relief sought. As stated supra, Local Bankr. R. 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Mr. Macaluso being substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankr. R. 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in January 17, 2012. The Modified Plan was confirmed July 28, 2014. Order, Dckt. 129. The term of the Plan is 36 months.

On April 2, 2014, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on April 2, 2014. Dckt. 100 and 101. It appears that what remains to be done in this case is assist the Debtor in completing the terms of the confirmed plan. The unpaid attorney fees are $788.42.

The court disallows the payment of the remaining $788.42 in attorneys' fees to prior counsel in this case and allows the $788.42 in the remaining No-Look Fees allowed in this case to be paid to Peter C. Macaluso, Debtor's current counsel. The court also allows an additional $150.00 in attorneys' fees to Peter G. Macaluso for the unanticipated and substantial legal services in obtaining this order from the court. The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional 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 Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $788.42 of the Fixed Fee previously allowed for prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.
>
> **IT IS FURTHER ORDERED** that $788.42 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Peter G. Macaluso through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $788.42 of monies for the balance due on the Fixed Fee approved in this case to Peter G. Macaluso.
>
> **IT IS FURTHER ORDERED** that Peter Macaluso is awarded an additional $150.00 in attorneys' fees for substantial and unanticipated legal services in prosecuting the present motion. L.B.R. 2016-1(c)(3). The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional fees.

25. 10-23147-E-13 PAUL/OPHELIA LORRAY MOTION TO SELL
WW-3 Mark 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 xxxxxx.

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.

JANUARY 13, 2015 HEARING

The court continued the hearing to January 27, 2015 at 3:00 p.m. due to the appraisal value of the Property coming in a lower amount than initially anticipated. Dckt. 56.

JANUARY 16, 2015 ORDER

On January 16, 2015, the court issued an order granting the Motion on the terms of the original Sales Agreement. Dckt. 57.

SUPPLEMENTAL EXHIBIT

On January 26, 2015, the Debtors filed a supplemental exhibit entitled "Cenlar - Sale Agreement Terms and Condition." Dckt. 60, Exhibit I. The letter is an "approval letter" that if accepted by the Debtors constitutes an agreement as to the short sale of the Property. The terms of the sale transaction between the Debtors and Buyer are states as follows:

1. Sales Price: $725,000.00

2. Real Estate Commission to be paid: $43,500.00

3. Payoff of other liens (not to exceed): $0.00

4. Taxes & Closing Costs (not to exceed): $20,241.26

5. Other approved deductions (not to exceed): $0.00

6. Net Sales Proceeds (not less than): $661,258.74

The letter contains additional provisions concerning the procedures for the Debtors to finalize the short sale.

The supplemental exhibit, however, does not contain an updated Sales Purchase Agreement between the Debtors and Buyer correcting the purchase price from $750,000.00 to $725,000.00. The letter from Centar is merely an agreement as to the amount due on the mortgage attached to the Property.

DISCUSSION

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: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

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 xxxxxx

26. 12-28547-E-13 PGM-6 | **RUBEN GUTIERREZ AND GRACIELA GUITIERREZ Peter Macaluso** | **MOTION TO MODIFY PLAN 12-18-14 [93]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 18, 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.

27. 10-46653-E-13 MARIA VIVAR **MOTION TO MODIFY PLAN**
SDB-3 Scott deBie **12-16-14 [57]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 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)(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 December 16, 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.

28. 13-27154-E-13 DENNIS/PATRICIA WHITCOMB
PGM-1 Peter G. Macaluso

MOTION TO DISALLOW JACOBY AND MEYERS, LLP/MACEY AND ALEMAN ATTORNEY FEES FOR FAILURE TO COMPLETE THE REPRESENTATION AND APPROVAL OF NO LOOK FEES REMAINING DUE TO NEW COUNSEL FOR COMPLETING THESE SERVICES 12-29-14 [58]

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

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

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

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, O.c., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services is granted.

Peter Macaluso, Debtor's counsel, filed the instant Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services on December 29, 2014. Dckt. 58.

Mr. Macaluso states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal

Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

The last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Mr. Macaluso argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Mr. Macaluso as he will not be tasked with completing cases without compensation.

In support, Mr. Macaluso cites to Fed. R. Bankr. P. 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Mr. Macaluso then argues that Fed. R. Bankr. P. 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Fed. R. Civ. P. 25 applies to adversary proceedings. What Mr. Macaluso appears to be relying on is Fed. R. Civ. P. 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Mr. Macaluso recognizes that the Fed. R. Civ. P. 25 is not directly on point, he argues that he wises to insure that the substitution of counsel, includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms with new counsel, Mr. Macaluso.

Mr. Macaluso argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Mr. Macaluso alleges that under Local Bankr. R. 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankr. R. 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Mr. Macaluso alleges that the language of the Local Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would be in practice at the time the services contracted for by the Debtor were needed.

DISCUSSION

Local Bankr. R. 2016-1(c)(5) seems to offer a sound legal basis for the court to grant the relief sought. As stated supra, Local Bankr. R. 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Mr. Macaluso being substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankr. R. 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in May 24, 2013. The Plan was confirmed August 26, 2013. Order, Dckt. 42. The term of the Plan is 60 months.

On April 14, 2014, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on April 14, 2014. Dckt. 53 and 54. It appears that what remains to be done in this case is assist the Debtor in completing the terms of the confirmed plan. The unpaid attorney fees are $1,722.20.

The court disallows the payment of the remaining $1,722.20 in attorneys' fees to prior counsel in this case and allows the $1,722.20 in the remaining No-Look Fees allowed in this case to be paid to Peter C. Macaluso, Debtor's current counsel. The court also allows an additional $150.00 in attorneys' fees to Peter G. Macaluso for the unanticipated and substantial legal services in obtaining this order from the court. The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional 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 Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $1,722.20 of the Fixed Fee previously allowed for prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.

IT IS FURTHER ORDERED that $1,722.20 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Peter G. Macaluso through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $1,722.20 of monies for the balance due on the Fixed Fee approved in this case to Peter G. Macaluso.

IT IS FURTHER ORDERED that Peter Macaluso is awarded an additional $150.00 in attorneys' fees for substantial and unanticipated legal services in prosecuting the present motion. L.B.R. 2016-1(c)(3). The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional fees.

29. 10-48255-E-13 RODOLFO IBARRA
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
12-30-14 [65]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 30, 2015. By the court's calculation, 28 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 Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Rodolfo P. Ibarra ("Debtor") to value the secured claim of Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP, ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 470 Royal Oaks Court, Vacaville California ("Property"). Debtor seeks to value the Property at a fair market value of $185,000.00 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.

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $220,064.00. Creditor's second deed of trust secures a claim with a balance of approximately $112,809.00. 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 Rodolfo P. Ibarra ("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 Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP, secured by a second in priority deed of trust recorded against the real property commonly known as 470 Royal Oaks Court, 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 $185,000.00 and is encumbered by senior liens securing claims in the amount of $220,064.00, which exceed the value of the Property which is subject to Creditor's lien.

30. 13-29155-E-13 LBG-2 | **JERRY DESCHLER AND SALLY HUI-DESCHLER** Lucas Garcia | **MOTION TO CONFIRM PLAN** **8-6-14 [68]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2014. By the court's calculation, 83 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.

Jerry and Sally Deschler ("Debtors") filed the instant Motion to Confirm the Amended Plan on August 6, 2014. Dckt. 68.

NOVEMBER 2, 2014 HEARING

At the hearing, the court granted the instant Motion confirming the plan. Dckt. 78.

ORDER VACATING NOVEMBER 2, 2014 CONFIRMATION

On December 16, 2014, the court issued an order vacating the Order granting the instant Motion due to the Trustee's opposition not being considered at the November 2, 2014 hearing. Dckt. 87. The order vacating rescheduled the hearing to 3:00 p.m. on January 21, 2015.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on October 14, 2014. Dckt. 73. The Trustee objects on the following grounds:

1. It appears 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 $4,150.00 for 60 months with a 0% dividend to unsecured creditors. The Debtors list an expense of $1,300.00 on Schedule J for the Florida Rental Property that is listed in Class 2 of the Plan, therefore the Debtor has an additional $1,300.00 to pay into the Plan.

2. The Debtor 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 Wells Fargo Home Mortgage in Class 2, but has not filed a motion to value collateral.

The Debtors filed this Plan on August 4, 2014, which proposes to value the collateral of Wells Fargo Home Mortgage in Class 2. The Debtors have failed to file a motion to value to date. The Debtors have known since August 4, 2014 (approximately 60 days) that a motion to value was needed in order to confirm this case and has failed to do so. This case has been pending for approximately 15 months without a confirmed Plan.

WELLS FARGO BANK, N.A.'S (Untimely) OBJECTION

Wells Fargo Bank, N.A. ("Creditor") filed an objection to the instant Motion on January 9, 2015. Dckt. 88. This Objection is not timely and no leave has been granted for the filing of a late objection. The court reviews the Objection for informational purposes. The Objection states,

1. The proposed Chapter 13 Plan purports to cram-down Creditor's lien. Debtors' Plan claims that the fair market value of the Property is $114,736.00. Creditor disagrees with the Debtors' asserted fair market value. Creditor has obtained an appraisal that values the property at $133,000.00 Dckt. 89, Exhibit B. As there is a dispute as to the true fair market value of the collateral, Creditor objects to the Plan and will oppose the Debtors' Motion to Cram-Down Creditor's lien once its filed.

DISCUSSION

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

The Trustee's and the Creditor's objections are well-taken. The plan is contingent on a Motion to Value the Collateral of Wells Fargo Bank, N.A. which, to date, has not been filed. The failure to have the claim valued makes the proposed plan unfeasible. Additionally, the concern over the Debtors' best efforts is justified since the expense for the Florida Rental Property on Schedule J should be applied to the plan as disposable income for plan payments.

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

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

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

31. 14-24955-E-13 DPC-1 ANTOINETTE TRIGUEIRO Sally Gonzales

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
6-18-14 [31]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. By the court's calculation, 34 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 to Confirmation.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor failed to appear and be examined at the First Meeting of Creditors held on June 12, 2014. The Debtor is required to attend the meeting under 11 U.S.C. § 343 and the Debtor has not presented any evidence to the Court as to why she failed to appear. The Meeting was continued to July 17, 2014 at 10:30 am.

The Trustee confirmed at the hearing the Debtor attended the continued First Meeting of Creditors.

Trustee also argues that while the plan proposes to pay the attorney $500.00 through the plan under LBR 2016-1(c), the Disclosure of Compensation of Attorney for Debtors appears to list in item #7 that the attorney services do not include some services required under LBR 2016-l(c), such as relief from stay actions. The Trustee believes that the Attorney is effectively opting out of 2016(c)(l) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

Lastly, the Trustee states the Debtor has not filed her tax returns during the 4-year period preceding the filing of the Petition. The Internal Revenue Service filed a claim on May 21, 2014 (Claim #1), which shows that no returns were filed for 2010, 2011, 2012 and 2013. The Franchise Tax Board filed a claim on June 17,2014 (Claim #2), which shows no returns were filed for 2010, 2011 and 2012. See 11 U.S.C. §§ 1308 & 1325(a)(9).

JULY 22, 2014 HEARING

The Debtor and Trustee requested a continuance to allow the IRS to process the Debtor's recently filed tax returns.

SEPTEMBER 16, 2014 HEARING

The hearing was again continued to allow Debtor more time to file the necessary documents.

NOVEMBER 18, 2014 HEARING

The court has reviewed the docket for this case and it does not appear that the Debtor has filed her most recent tax return documents. The Debtor must file her tax returns in order to confirm a plan. 11 U.S.C. § 1325(a)(9).

On November 11, 2014, Debtor filed a Reply directing the court to review the Amended Proofs of Claim filed by the Internal Revenue Service (Proof of Claim No. 1) and Franchise Tax Board (Proof of Claim No. 2). While the Franchise Tax Board amended proof of claim does not state that there are unfiled returns, the Internal Revenue Service still asserts that the Debtor failed to file her 2010 federal tax return. The federal tax claims are filed in the amount of $9,363.86 as a priority claim and $212,494.35 as a general unsecured claim. It appears that the Internal Revenue Service has used a $10,000.00 amount as a placeholder for the 2008 and 2010 tax years for which it states that no federal returns have been filed.

Though the hearing was continued for another 63 days, Debtor has not resolved with her CPA the missing 2010 tax return. No testimony is provided by the CPA stating that the 2010 tax return was prepared and filed. No appropriately redacted copy of a 2010 tax return is provided.

The court continued the hearing to January 21, 2015 at 3:00 p.m. Dckt. 43.

DISCUSSION

No supplemental pleadings have been filed in connection with this matter, indicating tot the court that the Debtor still has not resolved the missing 2010 tax return.

After giving the Debtor ample opportunity to figure out the discrepancy with the missing 2010 tax return, it appears that no resolution has yet been reached.

Therefore, the Trustee's objection is well-taken and the Debtor has failed to file the 2010 tax return as required by 11 U.S.C. §§ 1308 & 1325(a)(9). 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.

32. 14-27755-E-13 ANTHONY FURR **MOTION TO CONFIRM PLAN**
RJ-5 Richard Jare **11-14-14 [108]**

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 14, 2014. By the court's calculation, 74 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 Furr ("Debtor") filed the instant Motion to Confirm the Amended Plan on November 14, 2014. Dckt. 108

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 9, 2015. Dckt. 125. The Trustee objects on the following grounds:

1. It appears that the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). Section 6 of the Debtor's plan filed October 25, 2014 (Dckt. 92) calls for payment of $730.00 for four months and $2,150.00 per month for 56 months. Debtor is delinquent $1,196.00. To date Debtor has paid in $3,874.00 into the plan. The next schedule payment of $2,150.00 is due January 25, 2015.

2. The Debtor filed an Amended Schedule J on October 28, 2014 (Dckt. 96, pgs. 5-6) where Debtor increased without explanation the following expenses:

> Line #4: ownership expenses for home. Expense listed as $1,978.00 (increase of $292.00)
>
> Line #17c: S. Stratton, more than minimum her debts with MTG $1,696.00. Expense listed as $5,388.00 (increase of $2,388.00).

No clarification or explanation has been provided to the Trustee as to the changes made.

3. The plan relies heavily on the Valuation of the real property located at 1711 H Street, Sacramento, California. The Evidentiary Hearing is set to be conducted on January 23, 2015 at 9:30 a.m. Without a valuation it does not appear clear if the Debtor can make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

DISCUSSION

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

The Trustee's objections are well-taken. The Debtor appears to be delinquent in plan terms. The court cannot confirm a plan when the Debtor is delinquent under the terms of the proposed plan. The Debtor has failed to explain the nearly $2,700.00 in increased expenses, raising serious feasibility issues under the proposed plan. Lastly, the plan relies heavily on the valuation of the property which has yet to be resolved.

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.

33. 14-20056-E-13 THOMAS/SUSAN CLAYTON MOTION TO MODIFY PLAN
PGM-6 Peter Macaluso 12-18-14 [88]

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 18, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 and Susan Clayton ("Debtors") filed the instant Motion to Confirm the Modified Plan on December 18, 2014. Dckt. 88.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 93. The Trustee objects on the following grounds:

1. The Debtors fail to file supporting Declaration for modified proposed plan. According to the Trustee's records, Debtors filed proposed modified plan on December 18, 2014, while there is a supporting Motion, Notice, and Proof of Service, it appears the Debtors may have inadvertently forgot to file a supporting Declaration.

2. The Trustee is unsure if there should be project income for primary Debtor. The Debtors' have filed amended Schedules I and J. The projected income for primary Debtor reflects "$0.00" (Dckt. 92, pg. 5). There

is no explanation contained in Debtors' supporting Motion to address this issue, although the original Schedule I listed the Debtor employed as a Driver for 2 years (Dckt. 1, pg. 38) and the Supplemental Schedule I shows no employment (Dckt. 92, pg. 4) and the Supplemental Schedule J shows him as unemployed since August 2014 and attending school (Dckt. 92, pg. 9).

3. The Trustee is unsure if Debtors can afford proposed step plan payments. The proposed modified plan lists proposed step plan payments as "$4,840.00 thru 12/2014, $400.00 x 12 starting 1/2015, $1,300.00 x 37." There is no explanation contained in Debtors' supporting Motion to address how Debtors can afford an increase, although projecting employment for the Debtor may account for this. The amended expenses statement reflects that Debtors' can afford an amount no greater than $402.81.

4. According to the Trustee's records, the total amount paid in differs from amount listed in Debtors' proposed plan payments. The trustee's records reflect an amount of $4,940.00. The Debtors have listed the total amount paid in as $4,840.00. The Trustee has no opposition to this matter being addressed in the order confirming.

SUPPLEMENTAL DECLARATION OF DEBTORS

On January 20, 2015, the Debtors filed a Supplemental Declaration in support of the Motion. Dckt. 96. As a basis for changes which support modification of the Chapter 13 Plan, Debtors' testimony is "We have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; changes in income and household size. These changes are reflected in our amended income and expense statements." Debtors leave it to the court to determine what these changes are, why they are appropriate, and why they are reasonable as a basis for modification of the Plan. The Debtors confirm that they have missed three payments under the existing plan and are $3,085.00 in default.

Debtors do not testify as to what cause the multi-month default in the plan payments. In the Motion, Debtors' counsel states that the $3,085.00 in defaulted payments will be forgive, Debtors will then pay $400.00 a month for twelve months, and then the Plan payment will more than triple to $1,300.00 a month for thirty-seven months. In their Declaration, Debtors that they "anticipate Thomas getting another job and being able to increase the plan payments" as the basis for promising to more than triple the Plan payments after twelve months.

DISCUSSION

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

The Trustee's objections are well-taken. The crux of the Trustee's objections stem from the lack of explanation from the Debtors as to the change in income and whether they can support the step up in plan payments. Without more information, the Trustee and the court cannot determine the feasibility of the plan and, from the information provided, it does not appear that the Debtors can comply with the plan. The ability of the Debtors to make the proposed step up plan payments appears to be contingent on the primary Debtor acquiring employment following his continued education. (Information in footnote on Supplemental Schedule J.)

The lack of explanation as to the reason for the default, the current schooling for the unemployed (apparently) debtor, the possible educational opportunities from the current educational efforts, and a reasonable basis for there being a $1,300.00 in disposable income within one year, the Debtors have not provided the court with a basis to modify the proposed plan pursuant to 11 U.S.C. § 1329.

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

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

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

34. 14-24258-E-13 AEB-5 WITHDRAWN BY M.P.

BARNEY GAXIOLA
Andrew E. Bakos

MOTION TO CONFIRM PLAN
12-8-14 [96]

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

The Debtor having filed a Withdrawal of the Motion to Confirm Plan (Dckt. 103), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Confirm Plan was dismissed without prejudice, and the matter is removed from the calendar.**

35. 11-42659-E-13 GARAY/KAREN HARPER
SDB-3 Scott deBie

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH CAMP RICHARDSON RESORT, INC.
12-30-14 [95]

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.

The Motion for Approval of Compromise is denied without prejudice.

Garay and Karen Harper, the Chapter 13 Debtors, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Camp Richardson Resort, Inc. dba the Beacon Bar and Grill and Unigard Insurance Company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are in connection with a slip and fall accident suffered by Debtor Karen Harper.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 98):

1. The agreement settles Movant's claim for personal injury, loss of consortium, negligent infliction of emotional distress, and other damages arising from a "slip and fall" incident.

2. The settlement proposes that in exchange for a release of further liability claimed by Movant, Settlor will pay a total of $200,000.00 to Movant.

3. From that amount, $80,000.00 is to be paid Movant's counsel in the matter, Travis Black and Joe Weinberger, for attorneys' fees, and $12,804.49 be paid to such counsel for costs advanced, that $39,337.92 be paid to resolve medical service liens, and that the net proceeds of $67,857.59 be paid to Movant.

4. The claim, valued as "unknown" at the time of filing, was disclosed on Movant's Schedule B.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed non opposition on January 20, 2015.

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).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released.

Debtor Gary Harper states in the declaration that:

> We have had experienced legal counsel represent us in pursuit of the claim. We have been advised by such counsel, and agree, that the amount of $200,000.00 is a reasonable settlement amount and that, after costs and fees incurred, an eventual net judgment after trial would not be greatly in excess of this amount. This is especially true given the risk of not prevailing at trial.

Dckt. 97.

On its face, upon weighing the factors outlined in *A & C Props* and *Woodson*, the court could determine that the compromise is in the best interest of the creditors and the Estate.

However, the brevity of the Motion, summary testimony, and lack of information about persons being paid outside of the bankruptcy case leave the court unable, and unwilling to grant the motion.

Attorneys' Fees Not Approve As Part of Settlement

On July 28, 2014, the court filed its orders authorizing the employment of Travis G. Black and Joseph B. Weinberger as counsel for the two Movants in asserting the claims being settled. The legal fees and costs asserted by said attorneys total $92,804.49. The attorneys have not filed and motions for, and the court has not approved, attorneys' fees and costs. 11 U.S.C. § 330 and 328. Approval of the Settlement does not constitute approval of attorneys' fees and costs.

Allowance of Secured Claims and Payment Outside of Plan Not Authorized as Part of Settlement

The Motion further states that unidentified medial liens totaling $39,337.92 are to be paid from the Settlement. The Motion does not provide the court with the identify of such creditors, information concerning their liens, or the basis for payment outside of the Chapter 13 Plan. Approval of the Settlement does not constitute allowance of such claims, authorization to compromise such claims, or the payment of such claims.

The Settlement Agreement, Exhibit A (Dckt. 98), provides some information not stated in the Motion or Declaration. These include:

A. Debtor Karen Harper asserts her claims.

B. Debtor Garay Harper asserts his claims.

C. The Settlement is reported to CMS, as Debtor Karen Harper is a Medicare beneficiary.

D. The total settlement payment is $200,000, with no allocation to the Haren Harper claims or the Garay Harper claims.

E. Unstated amount to be paid Medicare/CMS pursuant to an unidentified "final demand letter for treatment for Karen Harper."

F. Uniguard Insurance (the settling party's insurance) will pay Medicare directly for an unstated claim.

On Schedule D, Debtors do not state that they have any creditors with any lien on this claim. Dckt. 1 at 19-20. No creditor has filed a proof of claim asserting a secured claim. Official Registry of Claims. The confirmed Chapter 13 Plan in this case does not provide for the payment of any secured claims for such medical treatment.

Finally, the court has no idea what portion of the settlement is for Garay Harper's claims and what portion of for Karen Harper's claims. The court has no idea whose claims are subject to the unidentified medical liens. This precludes the court from approving settlement of claims.

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 Approve Compromise filed by Garay and Karen Harper, 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 to Approve Compromise between Movant and Camp Richardson Resort, Inc. dba the Beacon Bar and Grill and Unigard Insurance Company ("Settlor") is denied without prejudice.

36. 14-29361-E-13 WALT SCHAEFER
Douglas Jacobs

MOTION TO DISMISS CASE, MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7
1-5-15 [34]

Tentative Ruling: The Motion to Convert the Bankruptcy Case 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 January 5, 2015. By the court's calculation, 22 days' notice was provided. 28 days' notice is required for this Chapter 13 case for a Motion requiring written opposition.

The court waives the defect in the Notice and treats this Motion as having been noticed for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2).

The Motion to Convert the Bankruptcy Case 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted.

This Motion to Dismiss the Chapter 13 bankruptcy case of Walter Schaefer ("Debtor") has been filed by Bank of the West ("Movant"), creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

1. That the Debtor has failed to make any of the loan payments due Movant which came due post-petition.

2. The Debtor submitted a proposed Chapter 13 Plan on October 1, 2014. That plan has not been confirmed and the court has sustained the objection of the Trustee to the Plan.

3. The Debtor, in his proposed Plan, represented that he was in escrow as part of a contract to sell the commercial real estate, 763 Main Street, Chester, California, which had been pledged as security for the Movant's loan. However, the Debtor has failed to list the purchase and sale agreement related to this sale in his schedules. Further, in the approximately three months since the petition was filed, the Debtor has not filed any motion with the court seeking to proceed with the sale.

4. Although not set forth in Schedule G, the Debtor leases the real property to AMI Precision, a corporation owned by the Debtor (Schedule B, item 35). Per the Debtor's Statement of Income, the lease should generate monthly revenue of $7,815.00. There is no indication that the Debtor is collecting the monthly lease payment.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on January 13, 2015. Dckt. 40. The Trustee responds as follows:

1. Debtor is $4,536.90 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,512.30 is due January 25, 2015. The case was filed on September 18, 2014, and the plan in § 1.01 calls for payments to received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid $0.00 into the plan to date.

2. The Trustee's Objection to Confirmation (DCN: DPC-1), was heard and sustained by this court at the December 16, 2014 hearing. No subsequent amended plan or Motion to Confirm has been filed since that date.

Though Debtor's opposition to the Trustee's Objection was filed with the court (Dckt. 28), Debtor failed to perform any remedy to the Trustee's Objection, therefore, the Trustee does not believe that Debtor intends to prosecute this case.

DEBTOR'S REPLY

Debtor filed a reply to the instant Motion on January 13, 2015. Dckt. 43. The Debtor replies as follows:

1. Procedurally, the Movant has failed to comply with the local rules for filing motions in this court. Local Bankr. R. 9014-1 lays out several requirements for filing motions that were not adhered to. Specifically: (1)the Movant has failed to indicate whether this is a 9014(f)(1) or (f)(2) motion; and (2) the Movant has failed to designate a docket control number; making it difficult to ensure that any response is properly associated with the Motion.

2. The Debtor filed this matter to stop a foreclosure of business property and allow that property to be sold. Escrow is pending for sale of the property located at 763 Main Street, Chester, California, owned by the Debtor. Proceeds of that sale will pay off the Movant in full.

3. The proposed plan is to use the remaining proceeds from the sale of that real property to pay 100% of the unsecured claims in this matter. Clearly it is in the best interest of all of the creditors to let the Debtor confirm a plan and close escrow on the property.

4. The Movant complains of not receiving a payment from the Debtor, but the Debtor's payments – as is appropriate – are being sent to the Trustee. They will be distributed when a plan is confirmed.

5. The Debtor has filed an amended plan and set it for confirmation. It includes paying the Movant in full from the proceeds of the real property sale.

6. The Debtor's plan will pay off the Movant and all of the other creditors of the Debtor, including 100% to the unsecured creditors.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

DISCUSSION

Unfortunately, the Movant has failed to provide sufficient notice for the instant Motion. Under the Local Rules, a Motion to Dismiss requires 28 days notice – if filed pursuant to Local Bankruptcy Rule 9014-1(f)(1). The Proof of Service shows that the Movant only provided 22 days notice, which would be sufficient if it were filed pursuant to Local Bankruptcy Rule 9014-1(f)(2).

Unfortunately, the Notice fails to specify what notice is being provided as required by Local Bankruptcy Rule 9014(d)(3). FN.1.

FN.1. The court also notes that Movant has elected not to comply with Local Bankruptcy Rule 9014-1(c) and has failed to provide a docket control number for this Motion. The failure to provide a docket control number creates a mess on the court's docket, in which parties and the court must hunt and peck through the docket (which in some cases may have more than 1,000 entries) in an effort to hopefully find all of the related pleadings.

However, the Motion, Trustee's Response, and Debtor's Opposition raise serious issues for the court. Movant asserts that while the Debtor is purporting to proceed with a sale of the property, no such contract is listed on the Schedules and no authorization for such a sale has been approved by the court. Additionally, it is asserted that the Debtor, who is the fiduciary to the bankruptcy estate, is allowing the Property to be used by an entity he controls without payment of rent to the bankruptcy estate.

The Chapter 13 Trustee responds that the Debtor was three months delinquent in Plan payments, totaling $4,536.90, as of the January 13, 2015 filing of the Response. Dckts. 40, 41. To date, Debtor has paid $0.00 to the Chapter 13 Trustee.

Debtor responds by objecting on procedural grounds that (1) there is not a docket control number and (2) that the Notice did not specify whether a written notice is required. As to the later point, the court will treat this as a Motion brought under Local Bankruptcy Rule 9014-1(f)(2) and afford the Debtor the opportunity to provide the court with a bona fide, good faith opposition at the hearing which would justify the court setting a briefing schedule in the case. L.B.R. 9014-1(f)(2)(C). As to the former, the failure to provide a docket control number is not a substantive defect, and in light of the issues raised not an appropriate procedural basis for summarily denying the motion. (Counsel for Movant should not count on such defects in pleadings being waived in the future.)

Debtor's substantive opposition is that the case was filed on September 18, 2014. While Movant is not being paid, "debtor's payments – as is appropriate – are being sent to the trustee." However, the evidence submitted by the Trustee is that the Debtor has made no payments to the Trustee since this case was filed in September 2014. The Plan filed by the Debtor on October 1, 2014 (Dckt. 10) requires the Debtor to make monthly payments of $1,512.30 to the Chapter 13 Trustee.

Further, the Chapter 13 Plan provides that the Debtor shall make Class 4 payments directly to Movant in the amount of $7,815.00. In placing Movant in Class 4 of the Plan, Debtor certifies (Fed. R. Bankr. P. 9011) that there are no arrearages or default on that secured claim. This is inconsistent with the disclosure under penalty of perjury in the Statement of Financial Affairs that no payments have been made to creditors which aggregate more than $6,225 in the 90 days prior to the bankruptcy case being filed. For Movant, 90 days of payments would be $23,445.00.

Additionally, while defaulting in payments to the Trustee and not making the promised Class 4 payments to Movant, Debtor states on Schedule I

that the estate is receiving $7,815.00 in income from rental property. Dckt. 12 at 23. On Schedule J Debtor further states under penalty of perjury that there is $7,815.00 a month being paid to the creditor (Movant) for the debt secured by that rental property. Having failed to make the plan payments and failing to make the Class 4 payments to Movant, the court computes that in the four months since the filing of this bankruptcy case (October-December 2014 and January 2015) the bankruptcy estate should have $37,309.20 of monies for the payment of creditor claims. (The $7,815 Class 4 payment and $1,512.30 plan payment for each of the four months.)

Debtor also argues that since he promises to sell the property, and if he sells the property as promised he should be able to pay all claims in full, the Motion should be denied. However, Debtor does not address the failure to obtain an order approving the sale, the failure to file a motion for authorization to sell the property, and the failure to make plan payments and the Class 4 payments. Debtor also fails to address the status of the $7,815.00 a month rent payments due the estate, the use of the estate property by the entity he controls, or the status of what computes to be $37,309.20 in monies which the estate, and the Debtor as the fiduciary of the estate, should be holding.

Debtor also argues that the Motion should be denied because the Debtor has filed an amended plan and motion to confirm such plan. As of the court's January 23, 2015 review of the Docket in this case, no such amended plan or motion had been filed.

Cause exists to convert this case to one under Chapter 7. As stated by the Debtor in his Opposition, creditor are to be paid from the liquidation of the Debtor's commercial rental property. The Chapter 7 can do that as well, if not better, than the Debtor. Further, the Debtor is using the estate property through a related entity – the finances of which are conducted outside of this bankruptcy case. This creates a significant conflict for the Debtor as the fiduciary of the estate and doing business through an entity which is using estate assets. If the Debtor has been allowing the entity he controls to use estate assets without paying the rent as he has represented to the court under penalty of perjury is due to the estate, there are other significant issues which arise. An independent fiduciary Chapter 7 trustee can fairly and properly address those issues and assert the rights and interests of the estate.

The independent fiduciary Chapter 7 trustee can review what is tangentially disclosed as a pending contract and escrow to determine (1) whether such a escrow and contract exist, (2) whether such contract binds the estate to sell the property, (3) the identity of the buyer and connections with the Debtor and bankruptcy estate, if any, (4) whether the contract, if any, if fair, proper, and enforceable, and (5) whether the sales price is a fair price, negotiated on reasonable market terms.

Conversion of the case will also afford the Debtor the opportunity to work with the Chapter 7 trustee to consummate the sale, if one exists.

The Motion is granted and this case is converted to one under Chapter 7. Conversion of the case is not a determination by the court of the Debtor's eligibility to be a Debtor under that Chapter of the Bankruptcy Code.

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 Convert the Chapter 13 case filed by the Bank of the West 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 case is converted to one under Chapter 7. Conversion of the case is not a determination by the court of the Debtor's eligibility to be a Debtor under that Chapter of the Bankruptcy Code.

37. 14-28862-E-13 DAVID/TOMASA OWENS
DPC-1 Peter Macaluso

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
10-29-14 [25]

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 and Debtors' Attorney on October 29, 2014. By the court's calculation, 20 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 to Confirmation.

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

1. David and Tomasa Owens ("Debtors") are $310.00 delinquent in plan payments to the Trustee. The next scheduled payment of 310.00 is due October 25, 2014. Debtors have paid $0.00 into the Plan to date.

The Trustee confirmed at the hearing that the Debtors are current on the plan payments as of the November 18, 2014 hearing.

2. Debtors' petition discloses that Debtors have a business, "dba Center Ring Boxing Club." Debtors' Schedule I lists net business income on Lin 8a of $90.00 per month as "Boxing Coach" for "Center Ring Boxing." No attachment showing gross business income and expenses is attached to the Schedule. Debtors' Statement of Financial Affairs shows $7,500.00 in year-to-date boxing gym dues.

3. Debtors' Schedule J indicates that Debtors have five children, but fails to list the ages of these children or indicate if they reside with Debtors. Debtors' Statement of Current Monthly Income indicates on line 16 a household size of 2 people. Debtors testified at the First Meeting of Creditors on October 16, 2014 that three children reside with Debtors.

4. Debtors' Plan may not be Debtors' best effort under 11 U.S.C. § 1325(b). Debtors are below median income according to the Statement of Current Monthly Income, Form 22C. Debtor David Owens testified at the First Meeting of Creditors that he has obtained new, full-time employment. Debtors may now have additional disposable income which can be paid into the Plan for the benefit of unsecured creditors.

NOVEMBER 18, 2014 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on January 27, 2015 to allow the Debtors to file supplemental pleadings and amended schedules on or before January 9, 2015. Dckt. 32.

TRUSTEE'S SUPPLEMENTAL PLEADING

On January 13, 2015, the Trustee filed a supplemental pleading stating that, to date, the Debtor has not filed any additional pleadings or amended schedules. Dckt. 32. Furthermore, the Trustee states that on or about January 12, 2015, Debtor's counsel emailed the Trustee and indicated that an amended plan and multiple amendments would be filed within a couple of days.

DEBTORS' REPLY

The Debtors filed a reply on January 20, 2015. Dckt. 34. The Debtors merely state that "they will have an amended plan, amendments and supplemental pleadings filed on or before the hearing." Dckt. 34.

DISCUSSION

The Trustee's objections are well-taken. Debtors' delinquency in plan payments and failure to accurately state their household size indicate that Debtors may be unable to make plan payments or otherwise comply with the plan. In order to be confirmed, the plan must be feasible. 11 U.S.C. § 1325(a)(6). This is grounds to sustain the objection.

Additionally, Debtor's failure to disclose business income for Center Ring Boxing and the fact that Debtor David Owens has new employment indicate that the Plan might not be Debtors' best efforts. Debtors must dedicate all disposable income to the plan. 11 U.S.C. § 1325(b)(1)(B). Because Debtors' total income is unclear from the evidence the court has currently, the plan may not be confirmed because the Debtors do not appear to have provided an accurate disclosure of their current monthly income.

To date, the Debtors have not filed any amended plans, amendments, or supplemental pleadings. The Debtors were given until January 9, 2015 to file these supplemental pleadings (Civil Minutes, Dckt. 29), but have failed to do so. See Dckt. 32.

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

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

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

38. 10-44663-E-13 MARY MANNER
AJP-6 Al Patrick

MOTION TO MODIFY PLAN
12-3-14 [103]

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 Not Provided. No Proof of Service was attached to the instant Motion. The court is unable to determine if proper 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.

Mary Manner ("Debtor") filed the instant Motion to Confirm the Modified Plan on December 3, 2014. Dckt. 103.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 108. The Trustee objects on the following grounds:

1. Debtor has not explained why Debtor seeks to modify the plan. Fed. R. Civ. P. 7(b) states the same "state with particularity" requirement for motions and complaints. Debtor's Motion provides no particulars regarding the plan modification or the reason for modification other than to state, "Debtor has included herein and estimated estimated value and cost of replacement vehicle based upon the estimates after shopping for a reasonable replacement family automobile." Where Debtor's Motion to Incur Debt to purchase a car was

denied on October 22, 2014 (Dckt. 95), the Trustee is not certain if the Debtor has bought or is proposing to buy a replacement car.

2. It appears the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent $1,290.00 under the terms of the proposed modified plan. According to the proposed modified plan, payments of $20,610.00 have become due. The Debtor has paid a total of $19,320.00 to the Trustee with the last payment posted on January 9, 2015 in the amount of $120.00.

3. Debtor's declaration fails to comply with 28 U.S.C. § 1746 as it limits the testimony to "my own personal knowledge" (Dckt. 105, pg. 2, line 21).

4. Debtor filed a Motion to Incur Debt on October 1, 2014 (Dckt. 76) seeking court permission to purchase an automobile (make and model not provided) for a total purchase price of $19,500.00. Debtor's Motion was subsequently denied per October 22, 2014 Civil Minute Order (Dckt. 93) and Debtor has not filed a new Motion to Incur Debt. Debtor is now modifying their plan to surrender their current automobile, a 2004 Volvo.

Debtor's Motion indicates Debtor has been shopping for a reasonable replacement family vehicle, while Debtor's Declaration states "certain repairs required to my automobile renders it as unserviceable." Debtor's Declaration states Debtor's Amended Schedule J transportation costs include Debtor's "best estimate, based upon the best information and my belief, of the cost of local public transportation, cab fare and rental fees when such other transportation needs to dictate." Debtor's transportation costs on Schedule J increase from $253.00 to $602.60, while Debtor has removed a monthly car payment of $384.00 which was previously budgeted as the monthly installment payment for anew car.

Between the Motion and Declaration, the Trustee is uncertain what the Debtor's intentions are regarding transportation. The proposed modified plan surrenders Debtor's vehicle, the Motion appears to indicate Debtor plans to purchase a vehicle, while the Declaration does not.

5. Section 1.01 proposes a monthly plan payment of "$N/A." Section 1.02 proposes a plan payment of $420.00 for 48 months, then $150.00 for months 49 through 60. The Trustee believes the purpose of Section 1.02 is to propose any additional payments to the plan above the regular monthly plan payment, and the proper place to propose the monthly plan payment is Section 1.01.

DEBTOR'S REPLY

Debtor filed a response to the Trustee's objections on January 17, 2015. Dckt. 112. The Debtor responds as follows:

1. Debtor has corrected the language in Debtor's Declaration to provide a declaration not based on "information and belief" but upon Debtor's personal knowledge. FN.1.

FN.1. Unfortunately, while including the "personal knowledge" language, the Debtor states that some items are stated on information and belief. The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section.

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2. Since the prior motion to obtain financing was denied and in response to Trustee’s Opposition including lines 10 through and including line 26, page 2 of Lori Tonkovich’s declaration, the Debtor in her Declaration file January 16, 2015 acknowledges the fact that financing was denied and stated: “Acknowledging the prior motion...was denied and I therefore will use public transportation, semiprivate automotive use such as. . . .”

3. Debtor use of alternative transportation allows the Debtor to continue to work Auburn, California to Rocklin, California at the Rocklin Unified School Districts placement where she has been employed for over 20 years and meet the transportation needs of her and her minor non-driving child.

4. The Debtor request any required modification as to wording of plan payment procedures be addressed at the hearing on this matter and correct by the Order Confirming, if granted by the court.

5. Further Debtor objects to the amount due under the plan as the calculation of 48 months at $420,00 per month is $2,160.00 and not $20,610.00 as stated in the above noted declaration of the Trustee's office staff.

DISCUSSION

No Proof of Service

The Debtor fails to attach a Proof of Service with a list of parties who were served the instant Motion and accompanying documents. Without the Proof of Service, the court cannot determine if sufficient service was provided to necessary parties and, therefore, the Motion is denied without prejudice.

Failed to State Grounds with Particularity

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 filed for relief under Chapter 13 of the United States Bankruptcy Code.

B. Debtor filed this Third Amended Chapter 13 Plan and request said Plan be confirmed.

C. This Third Amended Plan requires payments over 60 months.

D. Said plan provides for at least the amount payable to general creditors that would be payable under a Chapter 7 liquidation proceeding.

E. Debtor's Third Amended Plan complies with the provisions of 1325(a); all tax returns due have been filed or will be filed prior to the hearing and the debtor owes no support obligations as defined in section 1325(a).

F. Debtor has included herein and estimated estimated the value of and cost of a replacement vehicle based upon the estimates after shopping for a reasonable replacement family automobile.

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 the Debtor filed a third modified plan and that tax returns were filed or will be filed. This is not sufficient.

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

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

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

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

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

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

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

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

allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

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

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

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

Therefore, the Motion is denied without prejudice for failing to plead with particularity as required by Fed. R. Bankr. P. 9013.

Trustee's Objections

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

The Trustee's objections are well-taken. As discussed supra, the Motion fails to plead with particularity. The Debtor appears to be delinquent in plan payments, which is independent grounds at denying confirmation pursuant to 11 U.S.C. § 1325(a)(6). Furthermore, the discrepancies in the proposed plan, namely the Debtor's intention concerning transportation and the improper formatting of the proposed plan, raise serious doubts over the feasibility of the plan.

The Debtor's response does little to explain these discrepancies. All the response effectively does is provide the correction to the Declaration and superficially explain the change in transportation. The Motion, Declaration, nor the Response provide information that explains the dramatic change in transportation cost nor explains the Debtor's future intention as to transportation.

Despite the Debtor's response that the errors can be "corrected" in an order confirming, the objections raised by the Trustee are sufficient that the proposed plan cannot be confirmed.

Therefore, because of Debtor's failure to provide a Proof of Service, failure to plead with particularity, and concerns raised by the Trustee, 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.

39. 14-21465-E-13 THOMAS/DEBORAH LUPTON
PGM-5 Peter Macaluso

CONTINUED MOTION TO CONFIRM PLAN
7-1-14 [55]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 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 deny the Motion to Confirm the Amended Plan.

Thomas and Deborah Lupton ("Debtors") filed the instant Motion to Confirm Debtors' Second Amended Plan on July 1, 2014. Dckt. 55.

AUGUST 19, 2014 HEARING

On August 19, 2014, the court continued this matter to 3:00 p.m. on September 30, 2014. Civil Minutes, Dckt. No. 82.

SEPTEMBER 30, 2014 HEARING

On September 30, 2014, the court continued this matter to 3:00 p.m. on October 21, 2014.

OCTOBER 21, 2014 HEARING

On October 21, 2014, the court continue this matter to 3:00 p.m. on January 27, 2015. Dckt. 119. The court continued the hearing to afford the Debtor the opportunity to identify the correct creditor for the Motion to Value.

TRUSTEE'S OBJECTION

The Trustee states that Debtors' plan relies on the Motion to Value the Secured Claim of "Chase Home Finance/JPMorgan Chase Bank, N.A.," and the Motion for Order Approving Trial Loan Modification. If the motions approving the valuation and trial loan modification are not granted, Debtors' plan does not have sufficient monies to pay the claims in full.

OPPOSITION BY CREDITOR

Wells Fargo Bank, N.A., which identifies itself as the creditor of Thomas B Lupton and Deborah A Lupton ("Debtors"), objects to the Chapter 13 Plan filed by Debtors on the basis that it fails to properly provide for Creditor's claim pending the finalization of a loan modification.

Creditor's claim is evidenced by a promissory note executed by Debtors Deborah A. Lupton and Thomas B. Lupton, and dated October 19, 2005, in the original principal sum of $350,000.00. The Note is secured by a Deed of Trust encumbering the real property commonly known as 19965 West Mitchell Mine Road, Pine Grove, California 95665.

The Creditor argues that the Debtors' Plan fails to provide for the cure of Creditor's pre-petition arrears and reduces the ongoing post-petition payment pursuant to the terms of a trial loan modification to begin on July 1, 2014. While the Creditor does not oppose the inclusion of the trial loan modification's terms in Debtors' Plan, Creditor states that the Plan does not include any provisions should the Debtors fail to make the payments under the terms of the loan modification and modification be denied.

Creditor states that the Debtors' Plan does not indicate if the Debtors will amend their Plan to provide Creditor's pre-petition arrears and full post-petition payments, or surrender the property should the modification be denied. Thus, Creditor believes that the Debtors' Plan should not be confirmed as proposed because it fails to properly provide for the cure Creditor's pre-petition arrears and full ongoing post-petition payment should the Debtors default under the terms of the trial loan modification, failing to satisfy 11 U.S.C. § 1325(a)(5)(B)(ii).

DEBTOR'S SUPPLEMENTAL DECLARATION

On November 14, 2014, the Debtors filed a supplemental declaration. Dckt. 122. The Declaration states that the Debtors went to the Amador County Recorder's office and obtained a copy of the "Substitution of Trustee and full Reconveyance," recorded by JPMorgan Chase Bank, N.A. on June 16, 2014. Dckt. 123, Exhibit A.

DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan on the basis that the Plan relies on two pending motions. Trustee states that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Creditor objects on the basis that it fails to properly provide for Creditor's claim pending the finalization of a loan modification.

As to the Creditor's objection, the Motion to Approve Loan Modification has been granted on October 21, 2014. Dckt. 96. Because the loan modification has been approved, Creditor's objection is overruled as moot.

However, as to the Trustee's objection concerning the Motion to Value, the court denied the Motion to Value Collateral of Chase Home Finance And/Or JPMorgan Chase Bank, N.A., the court denied the Motion on October 21, 2014. Dckt. 98. Because the court denied the Motion to Value, it appears that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

To date, there is no pending Motion to Value, even though the Debtors in the supplemental declaration state that they have discovered the real creditor in interest.

Because the plan is contingent on a Motion to Value that has yet to be filed, the court sustains the Trustee's objection.

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.

40. 14-31066-E-13 DPC-1 | **RICARDO/DIANA MANZANO** Thomas Gillis | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-23-14 [21]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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 overrule the Objection.

David Cusick, 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 step 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.

JANUARY 13, 2015 HEARING

At the January 13, 2015 hearing, the court continued the hearing to 3:00 p.m. on January 27, 2015 to be heard in conjunction with Debtor's Motion to Value. Dckt. 27.

DISCUSSION

The heart of the Trustee's objection is that the plan will fail if the Motion to Value is not granted. However, the court granted the Motion to Value Collateral of Yolo Federal Credit Union on January 27, 2015. Therefore, the Trustee's first objection is overruled.

As to the Trustee's second objection, the Trustee points out that there is a scrivener's error as to where the Additional Provisions, Section 6 should be attached. Since this can be corrected in the order confirming the plan, the Debtors shall correct Section 6 of the plan to be appended to the plan.

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 8, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, stating an amendment that additional provisions in a Section 6 of the Plan are appended to 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.

41. 14-31066-E-13 RICARDO/DIANA MANZANO **MOTION TO VALUE COLLATERAL OF**
TOG-1 **YOLO FEDERAL CREDIT UNION**
12-17-14 [16]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 17, 2014. By the court's calculation, 41 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 Yolo Federal 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 Ricardo and Diana Manzano ("Debtor") to value the secured claim of Yolo Federal Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 256 Pheasant Court, Woodland, California ("Property"). Debtor seeks to value the Property at a fair market value of $306,639.00 as of the petition filing date. As owners, 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.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $443,500.00. Creditor's second deed of trust secures a claim with a balance of approximately $25,050.00. 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 Ricardo and Diana Manzano ("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 Yolo Federal Credit Union secured by a second in priority deed of trust recorded against the real property commonly known as 256 Pheasant Court, Woodland, 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 $306,639.00 and is encumbered by senior liens securing claims in the amount of $443,500.00, which exceeds the value of the Property which is subject to Creditor's lien.

42. 14-31269-E-13 ALLEN VOGEL
DPC-1 Scott Johnson

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

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, parties requesting special notice, and Office of the United States Trustee on December 23, 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.

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

1. Debtor has failed to provide the Trustee with a tax transcript or a copy of the Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists, see 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

2. Debtor's plan (Dckt. 5) is not signed or dated by the Debtor or Debtor's counsel. The Trustee is not certain that the Debtor is aware of the contents of the plan.

3. Debtor's plan fails the chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total $15,953.00 and Debtor proposes to pay 0% to unsecured creditors. According to Debtor's Schedules B and C (Dckt. 1, pages 9-13), non-exempt equity of $15,953.00 exists in a 2010 Chevy Camaro LT Coupe.

The Trustee's objections are well-taken. The Debtor has failed to provide the necessary and required tax documentation to the Trustee. The proposed plan does not contain the signature of the Debtor, raises concerns as to whether the Debtor is informed of the proposed plan's contents. Lastly, the nearly $16,000.00 in non-exempt assets seems to suggest that the Debtor would, in fact, fail the Chapter 7 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.

43. 14-30571-E-13 DPC-1 | FREDERIC LAURIDSEN AND ANGELA MILLA-LAURIDSEN Mikalah Liviakis | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 12-8-14 [24]

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

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan by David P. Cusick, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation of Plan by David P. Cusick was dismissed without prejudice, and the matter is removed from the calendar.**

44. 13-26976-E-13 JESSE MONTANEZ — MOTION TO MODIFY PLAN
WW-3 Mark Wolff — 12-18-14 [50]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. By the court's calculation, 44 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 December 18, 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.

45. 10-20377-E-13 SDB-5 | **SAMUEL/LONDA QUINN** Scott de Bie | **MOTION FOR SUBSTITUTION AND SUGGESTION OF DEATH** **12-22-14 [110]**

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 22, 2014. By the court's calculation, 36 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, Londa Quinn, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Samuel Quinn. This motion is being filed pursuant to Fed. R. Bankr. P. 1004.1 and Fed. R. Bankr. P. 7025 and 9014.

The Debtors filed for relief under Chapter 13 on January 8, 2010. On June 25, 2012, the debtor's third Modified Chapter 13 Plan was confirmed. On July 14, 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 Civil Procedure and Federal Rule of Bankruptcy Procedure 7025 and 9014, 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 as part of the instant Motion on

December 22, 2014. Dckt. 110. 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.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 12, 2015.

DISCUSSION

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 B.R. 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, Joint Debtor Londa Quinn 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. 110. 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, Londa Quinn, 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, Samuel Quinn. 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 Londa Quinn is substituted as the successor-in-interest to Samuel Quinn and is allowed to continue the administration of this Chapter 13.

46. 14-30877-E-13 DPC-1 | **TROY HARDIN** / **C. Anthony Hughes** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** / **12-23-14 [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 Debtor, Debtor's Attorney, and Office of the United States Trustee on December 23, 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.

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

1. Debtor may not have complied with 11 U.S.C. § 1325(a)(2). On November 3, 2014, the court issued an Order Approving Payment of filing fees in installments (Dckt. 7). According to the Order, installments are due December 3, 2014, and January 5, February 2, and March 3, 2015. Debtor has paid the first installment of $77.00 due December 3, 2014, but as remaining fees have not yet been paid, fees appear due under 28 U.S.C. § 1930 (Chapter 123). The Trustee is not certain if the court is willing to confirm a plan where filing fees have not been paid in full.

2. Section 2.06 of the Debtor's plan (Dckt. 12) indicates that Debtor's counsel opts out of no look fees and will file a Motion for compensation. The plan states that $6,000.00 in attorney fees will be incurred. Section 2.09 of the plan lists a secured lien in Class 2A by Hughes Financial Law and indicates it is secured by Debtor's residence. Additional provisions in section 6 state that the lien shall be released when fees are paid in full in the amount of $6,000.00 or any amount less approved by the court.

While the Trustee is not normally opposed to a flat fee arrangement, the Debtor appears to have given the attorney a deed of trust on January 24, 2014. This case was filed November 3, 2014 and provides for retention of the subject real property which is purported to have significant equity, and the plan provides for the fees in § § 2.06, 2.07, 2.08, and 6.01.

Where California Rules of Professional Conduct, Rule 3-300 require avoiding certain transactions absent disclosure to the client, advice regarding seeking independent counsel, and written consent of the client, the Trustee objects to the plan provisions for attorney fees absent proof that these requirements have been satisfied.

The Trustee's objections are well-taken. The failure of the Debtor to pay the necessary filing fees and are in violation of 11 U.S.C. § 1325(a)(2). This is independent grounds to deny confirmation.

As to the Trustee's objection concerning the attorney fees, a review of the proposed plan and the attorney fees agreed to, the court shares the Trustee's concern on whether there has been proper disclosure. While the instant plan is denied confirmation, Debtor and Debtor's counsel can provide the information that sufficient disclosure has been given to the client concerning the deed of trust. FN.1.

FN.1. In reviewing the Schedules, Plan, and Proofs of Claim, the court notes that this is a very modest case, with what appears to be only a modest amount of unsecured claims. It appears that an arrearage on the home mortgage and approximately $16,000 of priority tax debt is driving the Debtors' need to avail themselves of the relief available under Chapter 13. In light of the 100% plan treatment for general unsecured claims and modest amount of the debt, it is likely that the court and Trustee could address this issue in the context of confirmation and attorneys' fees allowance process.

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.

47. 10-23479-E-13 MARCO/MAGGIE PEDROZA
SNM-5 Stephen N. Murphy
MOTION TO APPROVE LOAN MODIFICATION
1-9-15 [51]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2015. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Marco and Maggie Pedroza ("Debtors") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Home Mortgage, a division of Wells Fargo Bank, 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 to $2,129.03 a month. The modification:

1. Will have a new maturity date of March 1, 2054;

2. Will have a new principal balance of $408,216.59, which is comprised of interest bearing principal of $345,000.00 and deferred principle of $63,216.59;

3. Will have a new interest rate of 4.750%; and

4. A new monthly payment of $2,129.03 which is comprised of principal and interest of $1,606.86 and an estimated monthly escrow payment of $522.17.

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.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Marco and Maggie Pedroza having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Marco and Maggie Pedroza ("Debtor") to amend the terms of the loan with Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., which is secured by the real property commonly known as 2408 Hanson Drive, Fairfield, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 54.

48. 12-24180-E-13 JOJIE GOOSELAW
PGM-5 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
12-29-14 [147]

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

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

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

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney, ("Applicant") for Jojie Gooselaw, the Chapter 13 debtor, ("Client"), makes a Request for the Allowance of Additional Fees and Expenses in this case.

The period for which the fees are requested is for the period April 11, 2012 through November 24, 2014. Applicant requests fees in the amount of $2,670.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 6, 2015.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the

extent, and the value of such services, taking into account all relevant factors, including–

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Benefit to the Estate

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

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including pre-confirmation evidentiary work and motions to modify.

"No-Look" Fees

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

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.
>
> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer

> that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 145. Applicant prepared the order confirming the Plan.

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

Pre-Confirmation Evidentiary Work: Applicant spent 7.75 hours in this category. Applicant assisted Client with reviewing the Objection to

Confirmation, attended status conference, prepared and served Debtor's reply to creditor's request for admissions, special interrogatories, and request for production of documents, reviewed motion to Dismiss, prepared and filed opposition, and appeared at hearing for Motion to Dismiss.

Motion to Modify: Applicant spent 2.75 hours in this category. Applicant modified the plan to provide for the claim of the Franchise Tax Board.

Motion to Modify: Applicant spent 2.85 hours in this category. Applicant modified the plan in response to the Trustee's Motion to Dismiss.

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**
Peter Macaluso	13.35	$200.00	$2,670.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$2,670.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the services provided were unanticipated and substantial, justifying additional fees in excess of the "no-look fee." the court further finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. Application for Additional Fees in the amount of $2,670.00 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 under the confirmed Plan.

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

Fees $2,670.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Macaluso, Professional Employed by Chapter 13 Debtors
>
> Fees in the amount of $2,670.00,
>
> The Fees and Costs pursuant to this Applicant, and Fees in the amount of $2,670.00 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

49. 14-31188-E-13 KATHIE SINKFIELD - WILLIS
DPC-1 Brian Turner
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-23-14 [26]

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

The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan by David P. Cusick (Dckt. 32), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Confirmation of Plan by David P. Cusick was dismissed without prejudice, and the matter is removed from the calendar.**

50. 14-31188-E-13 KATHIE SINKFIELD - WILLIS
GAR-1 Brian Turner
OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC
12-18-14 [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 Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 18, 2014. By the court's calculation, 40 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.

Nationstar Mortgage, LLC, servicer for U.S. Bank, National Association, as Trustee for the Holders of the SCFB Mortgage Securities Corp. Adjustable Rate Mortgage Trust 2005-8, Adjustable Rate Mortgage-Backed Pass-Through Certificates, Series 2005-8, ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtor is currently in default on the Note. The pre-petition arrearage is $2,194.85 that consists of an escrow deficiency.

2. The proposed plan states that the Debtor is not in default on Creditor's secured claim and that the post-petition monthly payment amount is $2,367.02.

3. The Debtor's chapter 13 Plan does not include the pre-petition arrearage of $2,194.85 that is owed to Creditor. Furthermore, the Plan does not include the correct post-petition monthly payment amount.

The Creditor's objections are well-taken. A review of the Proof of Claim No. 5 filed by Creditor on January 9, 2014 shows an arrearage amount of $2,194.85.

However, in reviewing Proof of Claim No. 5, an Annual Escrow Account Disclosure Statement is included as an attachment. On this document the $2,194.85 pre-petition "arrearage" is identified as the "Balance required at filing to maintain RESPA Minimum."

The Escrow Balance Projection shows two property tax payments from escrow, $1,688.80 each, and to insurance disbursements, totaling $1,179.00 (hazard insurance and flood insurance), to be made during the period from December 2014 through June 2015. As of December 2014 Creditor reports an escrow balance of $532.58. The regular monthly escrow payments are $379.72.

A quick calculation of the escrow amounts discloses the following:

	Monthly Escrow Payments and Disbursements	**Escrow Balance**
December Starting Balance		$532.58
December 2014 Escrow Pmt	$379.72	$912.30
December 2014 Insurance Disbursement	($489.00)	$423.30

December 2014 Property Tax Disbursement	($1,688.80)	($1,265.50)
January 2015 Escrow Pmt	$379.72	($885.78)
February 2015 Escrow Pmt	$379.72	($506.06)
March 2015 Escrow Pmt	$379.72	($126.34)
April 2015 Escrow Pmt	$379.72	$253.38
April 2015 Tax Disbursement	($1,688.80)	($1,435.42)
May 2015 Escrow Pmt	$379.72	($1,055.70)
May 2015 Insurance Disbursement	($690.00)	($1,745.70)
June 2015 Escrow Pmt	$379.72	($1,365.98)
July 2015 Escrow Pmt	$379.72	($986.26)
August 2015 Escrow Pmt	$379.72	($606.54)
September 2015 Escrow Pmt	$379.72	($226.82)
October 2015 Escrow Pmt	$379.72	$152.90
November 2015 Escrow Pmt	$379.72	$532.62
December 2015 Property Tax Disbursement (Projected)	($1,688.80)	($1,156.18)
December 2015 Insurance Disbursement (Projected)	($489.00)	($1,645.18)

Though the court cannot tell the reason why, based on the information provided by Creditor the escrow is under funded. It appears that the amount under funded is approximately $1,600.00. This does not include the asserted two month RESPA cushion, which would be $799.44. This is consistent with the $2,194.85 arrearage (including a RESPA two month cushion) asserted by Creditor.

The proposed plan does not appear to deal with these arrearages.

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 Creditor having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

51. 14-20091-E-13 MARLENE MCCRARY — MOTION TO MODIFY PLAN
DBJ-4 Douglas Jacobs — 11-25-14 [64]

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 25, 2014. By the court's calculation, 63 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.

Marlene McCray ("Debtor") filed the instant Motion to Confirm the Modified Plan on November 25, 2014. Dckt. 64. Debtor seeks to modify the plan to include what Debtor contends is the correct amount of arrears on her mortgage owed to Nationstar Mortgage, as well as, removing the debt owed to Sutter County listed in class two of Debtor's plan. Additionally, Debtor contends that the amount of arrears on the mortgage is higher than anticipated when the case was filed.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 74. The Trustee objects on the following grounds:

1. It appears the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent $1,686.08 under the terms of the proposed modified plan. According to the proposed plan, payments of $12,522.97 have become due. The Debtor has paid a total of $10,836.89 to the Trustee with the last payment totaling $2,800.00 having posted on November 19,2014. The December payment has not been made.

2. The Debtor's plan filed on 11/25/14 is not properly signed by the Debtor. The signatures do not comply with LBR 9004-19(c) "the name of the person signing the document shall be typed underneath the signature." Additionally, Debtor's Declaration (Dckt. 67) has also no been signed.

3. Debtor's Motion and Declaration are inaccurate. Debtor asserts in the instant Motion that Debtor "has made all payments on time to the trustee" as well as stating "I have had some unexpected circumstances arise over the past few months that have caused me to be unable to make my plan payments on time. I have become current on my payments to the Trustee and will be diligent on getting them to the trustees office on time for the remainder of my plan." Dckt. 67. Debtor is currently delinquent $6,477.11 under the confirmed plan. The Trustee filed a Motion to Dismiss on November 4, 2014 (Dckt. 57) for delinquency, which prompted the instant motion. Furthermore, Debtor is delinquent $1,686.08 under the proposed modified plan.

4. Debtor's modified plan proposes to increase the plan payment from $1,574.00 to $1,686.08, a $112.08 increase. Debtor's Declaration states Debtor will afford this increase by lowering food and electricity expenses and refers to Supplemental Schedule J filed as Exhibit A (page 3, lines 8-11). However, the Trustee is unable to locate the Supplemental Schedule J filed as an Exhibit within the court docket.

DISCUSSION

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

The Trustee's objections are well-taken. Debtor appears to be delinquent on plan payments, which is sufficient on its own to deny confirmation.

Additionally, without a proper by Debtor, Debtor's plan filed on 11/25/14 fails to comply with LBR 9004-19(c). Debtor's Declaration to the instant Motion also fails to comply with 28 U.S.C. § 1746, by failing to provide Debtor's signature on Debtor's Declaration. Therefore the requirements for the requirements necessary for submission of a declaration and Plan have not be satisfied. While this may be just a mere scrivener's error, it does raise concerns over whether the Debtor is aware of the contents of the Plan and Declaration.

Furthermore, Debtor's Declaration is inaccurate and conflicting. Debtor asserts payments have been made on time, then later states Debtor was previously behind on payments, but has become current. However, Debtor remains delinquent on the plan.

Lastly, missing from the Motion is Supplemental Schedule J which states the new allocation of monies for living expenses. Without Schedule J attached to the Declaration, as well as inaccuracies within the Motion and Declaration, the court is unable to determine the feasibility without updated Schedule J to determine the financial reality of the Debtor..

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.

52. 11-32192-E-13 MICAH/STEPHANIE WORKMAN
PGM-6 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
12-22-14 [126]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 22, 2014. By the court's calculation, 36 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.

Peter Macaluso, the Attorney, ("Applicant") for Micah and Stephanie Workman, the Chapter 13 debtors, ("Client"), makes a Request for the Allowance of Additional Fees and Expenses in this case.

The period for which the fees are requested is for the period December 11, 2012 through April 8, 2013. Applicant requests fees in the amount of $1,600.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on January 8, 2015.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including pre-confirmation evidentiary work and motions to modify.

"No-Look" Fees

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

"(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."

...

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

(2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice

> of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 145. Applicant prepared the order confirming the Plan.

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

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

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 to Modify: Applicant spent 9.3 hours in this category. Applicant modified the plan in response to the Trustee's Motion to Dismiss.

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**
Peter Macaluso	9.3	$200.00	$1,860.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$1,860.00

The Applicant requests compensation for 8.0 hours of post-confirmation work, totaling $1,600.00 in fees.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the services provided were unanticipated and substantial, justifying additional fees in excess of the “no-look fee.” the court further finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided.

Applicant seeks to be paid a single sum of $1,600.00 (or compensation for 8.00 hours of work) for its fees incurred for the Client. The Application for Additional Fees in the amount of $1,600.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $1,600.00

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtors

Fees in the amount of $1,600.00,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of $1,600.00 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

53. 09-30096-E-13 CAROL DOYLE
DPC-3 Eric Schwab

OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 3
12-9-14 [174]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on December 9, 2014. By the court's calculation, 49 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 3 of Wells Fargo Bank, N.A. is xxxx.

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Amended Claim is asserted to be secured in the amount of $65,000.00 and unsecured in the amount of $44,585.25. Objector asserts that:

1. The Trustee objects to the allowance of Proof of Claim No. 3 as whether the claim is valid may determine the nature of others in the case. The claim was filed on June 5, 2009 and amended on November 28, 2012. The claim was originally filed as $166,476.29 and secured by real estate described as 611 Main St., Susanville, California. The claim was amended to $65,000.00 secured

and $44,585.25 unsecured and secured by the same real estate as well as asserting the claim is secured by:

"The Trustee currently hold funds obtained by Debtor in settlement of an action against Debtor's former tenant (the "Settlement Funds") on the real property located at 611 Main Street, Susanville, California 96310 (the "Property"). Wells Fargo holds a security interest in the Settlement Funds which total Sixty-Five Thousand and 00/100 Dollars ($65,000.00) and constitute Wells Fargo's cash collateral because they arose from rent payments owed on the Property."

The Trustee can show that a short sale of the property was approved (Dckt. 115) that Wells Fargo Bank, N.A. submitted a conditional approval of the Debtor's request for lien release conditioned on the payment of $56,353.92, and estimated a shortfall of $90,699.92, dated April 20, 2010 (Dckt. 110, Exhibit 3), and that the Debtor and her trust recorded a deed of trust to "Danny L Simon" on May 30, 2012 as Document No. 2012-02630 (Dckt. 110, Exhibit 4) who was named as the buyer on the Motion to Approve Short Sale (Dckt. 107).

2. While the creditor Wells Fargo asserts a security interest in the settlement proceeds, documentation regarding the settlement appears as part of the court record in and Exhibit A to the Motion to Approve Processing of Debtor's Settlement Funds (Dckt. 54). The settlement was mediated, and the itemization as to rent appears either $36,000.00 or $54,000.00, not the $65,000.00 asserted as secured in the claim. Both parties to the settlement wanted and represented that they were the sole and lawful owner of the claims.

3. The creditor Wells Fargo may have released their lien including any interest they may have had in the rents where the conditional release issued after the settlement proceeds issued. While the creditor file a Notice of Perfection of Assignment of Rents on April 24, 2012 (Dckt. 105), this was after issuing the conditional release. Wells Fargo did object to the short sale after the conditional release on the day before the hearing (Dckt. 112), but the court did not address the objection in the ruling although counsel for Wells Fargo was present (Dckt. 114). Even if the entire lien has not been released, the claim does not appear secured for $65,000.00

The Trustee asks that the court determine if the amended claim should be allowed as secured for any amount other than a $0.00 amount, and that the amended claim should be allowed as unsecured in the total remaining amount, $109,585.25.

WELLS FARGO BANK, NATIONAL ASSOCIATION'S OPPOSITION

Wells Fargo Bank, N.A. filed an opposition to the instant Motion on January 13, 2015. Dckt. 182. Wells Fargo Bank, N.A. appears to convolute two objections into a single pleading, namely an objection to the instant Motion and the Trustee's Objection to Claim. As to the instant Objection, Wells Fargo Bank, N.A. opposes on the following grounds:

1. The amount of the settlement proceeds is clearly set forth in Debtor's Declaration in support of Motion to Approve Processing of Settlement Funds, which attached the settlement agreement and accounting of the proceeds. Wells Fargo Bank, N.A. asserts that there is no ambiguity as to the amount of the settlement proceeds which are clearly described in the Debtor's

Declaration. Dckt. 185, Exhibit 2. Wells Fargo Bank, N.A. is entitled to "all proceeds, revenues, rents, leases, insurance proceeds and other rights arising from or relating to [the Property]" and is granted "a Uniform Commercial Code security interest in the Rents and the personal property" relating to the Property, therefore the Settlement Funds in the full amount of $65,000.00 should properly be disbursed to Wells Fargo Bank, N.A.

2. Wells Fargo Bank, N.A. preserved its security interest in the settlement funds. The Trustee claims that Wells Fargo Bank, N.A. released its security interest in the rents when a conditional lien release issued after its Notice of Perfection of Rents. First, the conditional release only refers to the release of the Property and not the Property plus the settlement proceeds, and explicitly provides that Wells Fargo Bank, N.A. "reserves the right to pursue any and all remaining balances, unless it has been discharged through bankruptcy, as this agreement is not be construed as a full settlement." Wells Fargo Bank, N.A. has declared its entitlement to the settlement funds and intention to recover said funds throughout the course of these proceedings in its Motion to Turnover Cash Collateral, Objection to Short Sale, and Amended Proof of Claim. Wells Fargo Bank, N.A. obviously had no intention in the conditional release to release its lien on both the Property plus the settlement funds, and purposefully included language in the release that only the lien on the Property is released and nothing more, and reserved Wells Fargo Bank, N.A.'s rights to pursue any and all remaining balances. The dates of the conditional release and Notice of Perfection of Rents are irrelevant as Wells Fargo Bank, N.A. preserved its rights to recover the rents in the conditional release, and all parties in interest were notified of Wells Fargo Bank, N.A.'s interest in the rents from the outset of this matter.

Wells Fargo Bank, N.A. entered into the short sale with Debtor in good faith in order to facilitate compromise and allow Debtor to effectuate her Chapter 13 Plan. Wells Fargo Bank, N.A. presently has a valid security interest in the rents and has consistently maintained its entitlement to the settlement funds arising from the unlawful detainer action. The Trustee has always been aware of this. Therefore, Trustee's claim that Wells Fargo Bank, N.A. intentionally released its interest is facially disingenuous and legally without merit. The Trustee knew when negotiating for the short sale that Wells Fargo Bank, N.A.'s agreement was conditioned upon the Trustee's agreement that Wells Fargo Bank, N.A. preserved its claim to the $65,000.00 held by the Trustee.

TRUSTEE'S RESPONSE

The Trustee filed a response to Wells Fargo Bank, N.A.'s opposition on January 15, 2015. Dckt. 188. The Trustee responds as follows:

1. The Trustee believes if the creditor has a claim secured by the settlement proceeds, the court should order the Trustee to turnover the proceeds to the creditor. No provision exists under the confirmed plan to pay the secured claim, so such an order should not authorize Trustee compensation where the disbursement is not called for by the plan. If the court orders such a turnover, based on discussions with opposing counsel, the Trustee asks that the court order the proceeds payable to Wells Fargo Bank, N.A. and mailed to Creditor's Counsel.

2. The Trustee acknowledges that to the extent that the settlement proceeds can be analyzed based on the Settlement Lists (Dckt. 185, Exhibit 2) most of the charges appear to be work done or to be done for damage done as to the subject property.

3. The Trustee consents to the court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. The Trustee has filed these matters in an attempt to resolve these issues and allow for disbursement of funds held by the order of the court, and if necessary, the Trustee will file an adversary to interplead the funds.

APPLICABLE LAW

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

DISCUSSION

As addressed above, Wells Fargo Bank, N.A. filed its original claim for $166,476.99 in this case on June 5, 2009. Proof of Claim No. 3. At that time Wells Fargo Bank, N.A. believed, and did so assert, that its claim was fully secured.

In May 2012, the Debtor presented to the court a motion to sell the real property securing the Wells Fargo Bank, N.A. secured claim for $65,000.00, significantly less than the amount of the Bank's secured claim. Motion, Dckt. 107. Debtor presented the court with a "lien release" from Wells Fargo Bank, N.A. so that the sale could be consummated as a "short sale." A copy of that lien release is provided to the court with the current Motion. Exhibit A, Dckt. 179.

In pertinent part, the Lien Release provides,

A. Wells Fargo Bank, N.A. gives it conditional approval that it will release its lien on the real property (expressly stating the "above-referenced property") if it was paid $56,353.37 on or before April 30, 2012.

B. Wells Fargo Bank, N.A. does not release the borrower from the remaining liability.

C. The identified property is released "as is" for the $56,353.37 payment.

D. Upon receipt of the payment Wells Fargo Bank, N.A. will relies its lien recorded for the property.

E. Wells Fargo Bank, N.A. expressly reserved the right to pursue any and all remaining deficiency balances.

The court granted the motion and the short sale was completed.

At the time of the Spring 2012 sale of the real property securing the Wells Fargo Bank, N.A. claim, all parties were cognizant that the estate was holding $65,000.00 cash which was from a settlement relating to the real property which secured the Wells Fargo Bank, N.A. claim. On July 12, 2011, the Debtor filed a Motion to Approve Processing of Debtor's Settlement Funds by Chapter 13 Trustee. Dckt. 50. The motion sought to have the Chapter 13 Trustee negotiate the $65,000.00 settlement check and then disburse the monies to the Debtor's trust.

The court determined that the $65,000.00 was property of the estate, and not property of the Debtor's trust separate and apart from the estate. Civil Minutes, Dckt. 79. No issue concerning there being any liens on the settlement proceeds was presented to the court. The Chapter 13 Trustee was ordered to hold the $65,000.00 and not disburse it except upon further order of the court. Order, Dckt. 80.

The Settlement Agreement was filed as Exhibit A in support of the Debtor's Motion. Dckt. 54. The schedule of damages upon which the Settlement Agreement is based are stated as follows:

Eight Months Rent	$36,000.00
Repairs For Damages to the Property	$12,500.00
Taxes Paid	$1,894.54
Project Manager, Locksmith, Water Bill, Sewerage Fees	$1,825.00
Attorneys' Fees	$5,000.00
	$57,219.54

Wells Fargo Bank, N.A. clearly states in its opposition (1) that it asserts its lien against the rents from the real property which are included in the Settlement and (2) it did not release its lien against the additional collateral, the rents, when it released its lien so that the short sale could be completed.

Wells Fargo Bank, N.A. asserts that the full $65,000.00 represents rents subject to its lien. While Wells Fargo Bank, N.A. does have a lien to assert (the court concluding that the lien release for the short sale did not

include a release of the lien on the additional collateral), the terms of the Settlement Agreement which was approved by this court is not for $65,000.00 of rent.

Exhibit B to the Settlement Agreement, which states the Damages upon which the Settlement was based, and approved by the court, include $36,000.00 for rent. With respect to $36,000.00, the court agrees that Wells Fargo Bank, N.A. is on sound footing with its arguments that it has a lien on $36,000.00 of the Settlement Proceeds.

The court is equally convinced that Wells Fargo Bank, N.A. does not have a lien on the settlement proceeds for:

a. Attorneys' Fees.....$5,000.00

b. Taxes Paid.....$1,894.54

c. Project Manager and Fees.....$1,825.00

With respect to the $12,500.00 for "Repairs to Damages," the settlement agreement identifies those damages as monies due the Debtor for having repairs made to the Property. Those repairs inured to the benefit of Wells Fargo Bank, N.A., increasing the value of the collateral by repairing the damages. The $12,500.00 is not subject to the Wells Fargo Bank, N.A. lien and goes to pay unsecured creditors who likely did the work, made the repairs to the Wells Fargo Bank, N.A. collateral, and have gone unpaid.

There is $8,780.46 of settlement monies which are not accounted for on the Exhibit B to the Settlement Agreement statement of damages. In a "perfect world," the sophisticated banking creditor would communicate with the Chapter 13 Trustee, identify this amount and strike a compromise. It appears that there has been little communication in this case, except for the filing of motions, filing of oppositions, and expenditures of time and money for courtroom discussion.

It appears that a logical approach to this could be for Wells Fargo Bank, N.A. to reduce its secured claim to $40,863.02 (which is $36,000.00 plus 36/65ths of $8,780.46) and the Trustee to withdraw his Claims Objection as to that amount.

At the hearing the Parties xxxxxxxxxxxxxxxxxxxx.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Wells Fargo Bank, N.A., Creditor filed in this case by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 3 of Wells Fargo Bank, N.A. is xxxxxx.

54. 09-30096-E-13 CAROL DOYLE — **MOTION TO AUTHORIZE DISBURSEMENT OF FUNDS**
DPC-2 Eric Schwab — **12-9-14 [169]**

No Tentative Ruling: The Motion to Authorize Disbursement of Funds 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, creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Authorize Disbursement of Funds 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 Authorize Disbursement of Funds is ----------.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Authorize Disbursement of Funds on December 9, 2014. Dckt. 169. The Trustee moves the court to amend its prior order entered August 1, 2011 (Dckt. 80) which required the Trustee to negotiate a $65,000.00 settlement check and to not disburse funds until further order of the court.

The prior order provided that nay liens and interests, if any, in the settlement proceeds would continue on the monies. The Debtor is in a confirmed 100% plan which is in default, and both the creditor Wells Fargo Bank and the

Trustee have previously sought orders to authorize disbursement (Dckt. 95 and 155), where said motions were denied (Dckt. 102 & 103; 166 and 168).

The Trustee states that two parties have asserted an interest in the funds to date: (1) the Debtor who brought the original Motion to Approve Processing of Debtor's Settlement Funds (Dckt. 50) and asserted their interest was as co-trustee of a self-settle trust, which was discussed and dismissed by the court (Dckt. 49); and (2) the Creditor, Wells Fargo Bank, N.A., who has asserted a security interest based on the derivation of settlement proceeds from rent, where they are the holder of a secured claim #3 (filed June 5, 2009 and amended November 28, 2012) and filed a Notice of Perfection of Assignment of Rent (Dckt. 105, April 24, 2012).

The court approved the short sale of the property on May 8, 2012. Dckt. 115. Concurrently with this motion, the Trustee is filing an objection to the claim of Wells Fargo Bank as amended, asserting that either the claim is not secured based on a conditional release the creditor issued allowing the short sale, or that the creditor is not secured for the entire $65,000.00 amount which is what the creditor claim in the amended claim.

The Trustee seeks an order authorizing disbursement in the following alternatives:

1. The Trustee to disburse the funds held to the unsecured creditors in this case, (including creditor Wells Fargo Bank), pursuant to the plan; or

2. The Trustee be authorized to disburse these funds over to any allowed secured claim of Wells Fargo Bank – and that the Plan be deemed modified to allow for this disbursement – with the remainder to be paid to unsecured creditors pursuant to the plan; or

3. The Trustee be authorized to turn these funds over to the Debtor if the case is dismissed or a Chapter 7 Trustee if the matter is converted; or

4. The Trustee be authorized to interplead these funds and pay these funds to the Court Clerk upon the filing of an appropriate adversary proceeding.

WELLS FARGO BANK, NATIONAL ASSOCIATION'S OPPOSITION

Wells Fargo Bank, N.A. filed an opposition to the instant Motion on January 13, 2015. Dckt. 182. Wells Fargo Bank, N.A. appears to convolute two objections into a single pleading, namely an objection to the instant Motion and the Trustee's Objection to Claim. As to the instant Motion, Wells Fargo Bank, N.A. opposes on the following grounds:

1. The amount of the settlement proceeds is clearly set forth in Debtor's Declaration in support of Motion to Approve Processing of Settlement Funds, which attached the settlement agreement and accounting of the proceeds. Wells Fargo Bank, N.A. asserts that there is no ambiguity as to the amount of the settlement proceeds which are clearly described in the Debtor's Declaration. Dckt. 185, Exhibit 2. Wells Fargo Bank, N.A. is entitled to "all proceeds, revenues, rents, leases, insurance proceeds and other rights arising from or relating to [the Property]" and is granted "a Uniform Commercial Code

security interest in the Rents and the personal property" relating to the Property, therefore the Settlement Funds in the full amount of $65,000.00 should properly be disbursed to Wells Fargo Bank, N.A.

2. Wells Fargo Bank, N.A. preserved its security interest in the settlement funds. The Trustee claims that Wells Fargo Bank, N.A. released its security interest in the rents when a conditional lien release issued after its Notice of Perfection of Rents. First, the conditional release only refers to the release of the Property and not the Property plus the settlement proceeds, and explicitly provides that Wells Fargo Bank, N.A. "reserves the right to pursue any and all remaining balances, unless it has been discharged through bankruptcy, as this agreement is not be construed as a full settlement." Wells Fargo Bank, N.A. has declared its entitlement to the settlement funds and intention to recover said funds throughout the course of these proceedings in its Motion to Turnover Cash Collateral, Objection to Short Sale, and Amended Proof of Claim. Wells Fargo Bank, N.A. obviously had no intention in the conditional release to release its lien on both the Property plus the settlement funds, and purposefully included language in the release that only the lien on the Property is released and nothing more, and reserved Wells Fargo Bank, N.A.'s rights to pursue any and all remaining balances. The dates of the conditional release and Notice of Perfection of Rents are irrelevant as Wells Fargo Bank, N.A. preserved its rights to recover the rents in the conditional release, and all parties in interest were notified of Wells Fargo Bank, N.A.'s interest in the rents from the outset of this matter.

Wells Fargo Bank, N.A. entered into the short sale with Debtor in good faith in order to facilitate compromise and allow Debtor to effectuate her Chapter 13 Plan. Wells Fargo Bank, N.A. presently has a valid security interest in the rents and has consistently maintained its entitlement to the settlement funds arising from the unlawful detainer action. The Trustee has always been aware of this. Therefore, Trustee's claim that Wells Fargo Bank, N.A. intentionally released its interest is facially disingenuous and legally without merit. The Trustee knew when negotiating for the short sale that Wells Fargo Bank, N.A.'s agreement was conditioned upon the Trustee's agreement that Wells Fargo Bank, N.A. preserved its claim to the $65,000.00 held by the Trustee.

TRUSTEE'S RESPONSE

The Trustee filed a response to Wells Fargo Bank, N.A.'s opposition on January 15, 2015. Dckt. 188. The Trustee responds as follows:

1. The Trustee believes if the creditor has a claim secured by the settlement proceeds, the court should order the Trustee to turnover the proceeds to the creditor. No provision exists under the confirmed plan to pay the secured claim, so such an order should not authorize Trustee compensation where the disbursement is not called for by the plan. If the court orders such a turnover, based on discussions with opposing counsel, the Trustee asks that the court order the proceeds payable to Wells Fargo Bank, N.A. and mailed to Creditor's Counsel.

2. The Trustee acknowledges that to the extent that the settlement proceeds can be analyzed based on the Settlement Lists (Dckt. 185, Exhibit 2) most of the charges appear to be work done or to be done for damage done as to the subject property.

3. The Trustee consents to the court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. The Trustee has filed these matters in an attempt to resolve these issues and allow for disbursement of funds held by the order of the court, and if necessary, the Trustee will file an adversary to interplead the funds.

DISCUSSION

This bankruptcy case was filed in May 2009. A review of the history of this case is made by the court in its Civil Minutes from an earlier motion by which the Chapter 13 Trustee sought authorization to get $65,000.00 out of his bank account and into the hands of creditors. The sixtieth month of the Chapter 13 Plan expired in April 2014.

xxxxxxxxxxxxxx

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 Authorize Disbursement of Funds by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is xxxx.

55. 11-42598-E-13 ANDREAS/LORI LANGE MOTION TO MODIFY PLAN
SDB-2 Scott de Bie 12-15-14 [41]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 December 15, 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.

56. 13-23198-E-13 BYRON/JANET MUDD
PGM-1 Peter Macaluso

MOTION TO DISALLOW JACOBY & MEYERS, LLP /MACEY & ALEMAN DBA LEGAL HELPERS, P.C., ATTORNEY FEES FOR FAILURE TO COMPLETE THE REPRESENTATION AND APPROVAL OF NO LOOK FEES REMAINING DUE TO NEW COUNSEL FOR COMPLETING THESE SERVICES
12-29-14 [65]

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

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

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

The Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, O.c., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services 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 Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services is granted.

Peter Macaluso, Debtor's counsel, filed the instant Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services on December 29, 2014. Dckt. 65.

Mr. Macaluso states that Debtor hired the Law Firm of Jacoby & Meyers, L.L.P. to file his Chapter 13 bankruptcy. On or about January 31, 2014, the Law Firm went out of business. Thereafter, the firm of Macey & Aleman dba Legal Helpers, P.C. took over the case load and reassigned attorneys internally and consequently to each case such as the instant case.

The last remaining attorney of record, Keith Wood, was employed as an associate attorney and was laid off when the Law Firm closed. Mr. Wood's name was listed as the Attorney of Record to facilitate the transfer of cases as he was the remaining local attorney.

Mr. Macaluso argues that the case is in need of competent counsel, that has the staff an resources to complete the cases. All attorney fees remaining should be assigned to Mr. Macaluso as he will not be tasked with completing cases without compensation.

In support, Mr. Macaluso cites to Fed. R. Bankr. P. 2016(b) stating that he is seeking to comply with the provisions that require a disclosure of compensation, to complete the work that has been authorized by the court in the no look fee approval, and to receive the payment that are still due and being paid by the Trustee for the services provided to complete the instant case.

Mr. Macaluso then argues that Fed. R. Bankr. P. 7025(b) is applicable because, in the instant case, the Law Firm, which was employed to represent the Debtor has ceased to exist. However, Fed. R. Bankr. P. 7025 merely states that Fed. R. Civ. P. 25 applies to adversary proceedings. What Mr. Macaluso appears to be relying on is Fed. R. Civ. P. 25(c) which provides:

> (C) Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, or orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

Mr. Macaluso recognizes that the Fed. R. Civ. P. 25 is not directly on point, he argues that he wises to insure that the substitution of counsel, includes the substitution and the disallowance of the remaining attorney fees in the case, thereby substituting the two non-existent Law Firms with new counsel, Mr. Macaluso.

Mr. Macaluso argues that disallowance of the previous fees ordered due to impossibility and Substitution under Fed. R. Bankr. P. 7025 appears to be the most efficient and expeditious means for the parties to fully resolve this matter while allowing the Debtor to have representation and to insure that the attorney fees set aside in the plan are issued to the counsel that is completing the services for the Debtor.

Mr. Macaluso alleges that under Local Bankr. R. 2016-1(c)(5) the court has the power to approve this transfer of attorneys fees. Local Bankr. R. 2015-1(c)(5) states:

> (5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of development not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Mr. Macaluso alleges that the language of the Local Rule is applicable because neither the court nor the Debtor could have anticipated that neither the original law firm, nor the second law firm, nor the associate attorneys would be in practice at the time the services contracted for by the Debtor were needed.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 6, 2015.

DISCUSSION

Local Bankr. R. 2016-1(c)(5) seems to offer a sound legal basis for the court to grant the relief sought. As stated supra, Local Bankr. R. 2016-1(c)(5) does permit the court to allow compensation different than what has been provided for in a confirmed plan if "such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan" was confirmed.

Here, the fact that both law firms employed by Debtor prior to Mr. Macaluso being substituted in as attorney closed during the Debtor's case is clearly an unanticipated event. This type of unforeseen change in circumstances seems to fall squarely within the purview of Local Bankr. R. 2016-1(c)(5).

Therefore, because the unanticipated development of Debtor's previous attorneys going out of business after Debtor's plan being confirmed, the court grants the Motion.

The challenge for the court is that none of the effected attorneys have responded to the Motion. It may well be that the modest dollar amount at issue does not warrant a response – the time spent being well in excess of any disgorgement and the future fees.

This bankruptcy case was filed in March 9, 2013. The Plan was confirmed July 31, 2013. Order, Dckt. 49. The term of the Plan is 36 months.

On April 30, 2014, current Counsel filed the Motion for Substitution of Attorney and the court granted the motion on May 31, 2014. Dckt. 62 and 63. It appears that what remains to be done in this case is assist the Debtor in completing the terms of the confirmed plan. The unpaid attorney fees are $1,530.54.

The court disallows the payment of the remaining $1,530.54 in attorneys' fees to prior counsel in this case and allows the $1,530.54 in the remaining No-Look Fees allowed in this case to be paid to Peter C. Macaluso, Debtor's current counsel. The court also allows an additional $150.00 in attorneys' fees to Peter G. Macaluso for the unanticipated and substantial legal services in obtaining this order from the court. The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional 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 Motion to Disallow Jacoby & Myers, L.L.P./Macey & Aleman DBA Legal Helpers, P.C., Attorney Fees for failure to Complete the Representation and Approval of No Look Fees Remaining to New Counsel for Completing These Services filed by Debtor's counsel 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, $1,530.54 of the Fixed Fee previously allowed for prior counsel for the Debtor in this case pursuant to Local Bankruptcy Rule 2016-1(c) is disallowed.
>
> **IT IS FURTHER ORDERED** that $1,530.54 of the Fixed Fee shall be disbursed by the Chapter 13 Trustee to Peter G. Macaluso through the Chapter 13 Plan as the successor counsel for Debtor. The Chapter 13 Trustee is authorized to make the $1,530.54 of monies for the balance due on the Fixed Fee approved in this case to Peter G. Macaluso.
>
> **IT IS FURTHER ORDERED** that Peter Macaluso is awarded an additional $150.00 in attorneys' fees for substantial and unanticipated legal services in prosecuting the present motion. L.B.R. 2016-1(c)(3). The Chapter 13 Trustee is authorized to pay the additional $150.00 in fees from any remaining monies of the estate after payment of claims and other expenses as required by the plan, if Mr. Macaluso so requests the additional fees.

57. 09-45699-E-13 PAULA MOYRON — MOTION TO MODIFY PLAN
EJS-4 Eric Schwab — 12-18-14 [53]

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 18, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

Paula Moyron ("Debtor") filed the instant Motion to Confirm the Modified Plan on December 18, 2014. Dckt. 53. Debtor's proposed Modified Plan states that Debtor has paid a total of $86,240.33 from December, 2009 through November, 2014. Dckt. 55.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 13, 2015. Dckt. 59. The Trustee's records reflect that from December, 2009 through November, 2014, the Debtor has actually paid a total of $91,200.00. The Trustee would have no objection if this were 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 total amount paid into the plan from December, 2009 through November 2014. Therefore, the court will grant the Motion and have the Debtor correct the amount listed as paid in the plan, from (December, 2009 through November, 2014) to $91,200.00 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 December 18, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan and correct the amount paid from December, 2009 through November, 2014 to $91,200.00, 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.

58. 14-28099-E-13 YASWANT/KAMINI SINGH MOTION TO CONFIRM PLAN
LRR-1 Len ReidReynoso 12-2-14 [57]

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 2, 2014. By the court's calculation, 56 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.

Yaswant and Kamini Singh ("Debtors") filed the instant Motion to Confirm the Amended Plan on December 2, 2014. Dckt. 57.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an Opposition to the instant Motion on January 9, 2015. Dckt. 62. The Trustee objects on the following grounds:

1. It appears that the Debtors cannot make payments required under 11 U.S.C. §1325(a)(6). Section 6.01 of Debtors plan filed December 2, 2014, Dckt. 60., calls for payments of $3,188.00 for 2 months and $1,355.00 per month for 58 months, if the plan section is to have any effect. Debtors are delinquent $1,355.00. To date Debtors have paid in $7,321.00 into the plan. The next scheduled payment of $1,355.00 is due January 25,2015.

2. The Debtor improperly inserts a section 6.01 on page 5 of the plan, requiring payment of $3,188.00 for months 1 and 2, and $1,355.00 for months 3

to 60; without this provision the plan in section 1.01 call for only plan payments of $1,355.00 per month. The provisions are improperly listed in this section and should be attached as additional provisions to 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 second objection appears to be a mere scrivener's error in the Motion and proposed Plan, the first objection on grounds of delinquency highlights feasibility issues with the proposed Plan.

The Debtors' delinquency in Plan payments under the proposed plan is grounds to deny confirmation. With no evidence submitted by the Debtors showing that they have become current on the proposed Plan payments, the proposed Plan 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.