UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 10, 2015 at 3:00 p.m.

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

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, 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).

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

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.

JANUARY 27, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 5, 2015 to allow the Debtor the opportunity to cure the delinquency. Dckt. 34.

TRUSTEE'S WITHDRAWAL OF OBJECTION

The Trustee filed a Notice of Withdrawal of Trustee's Objection on January 30, 2015. Dckt. 35. The Trustee states that the Debtor is now current under the proposed modified plan, having made a $6,212.00 payment to the Trustee which posted January 29, 2015.

DISCUSSION

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

The Trustee's objection having been withdrawn, no opposition to the Motion remains.

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 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.

2.	**14-31509-E-13 DPC-1**	**BOBBY CHRISTIAN AND SEAN WARREN Peter Macaluso**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-14-15 [21]**

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

1. The Plan appears not to be the Debtor's best effort or the Debtor may not be able to make payments, under 11 U.S.C. § 1325(b) or § 1325(a)(6). Bobby T. Christian, Jr. ("Debtor"), admitted at the First Meeting of Creditors held on January 8, 2015 that he had new employment which as to date is not listed on the Debtor's Schedule I.

DISCUSSION

The Trustee's objections are well-taken. A review of the docket shows that no supplemental Schedules I and J have been filed. The failure by the Debtor to file a supplemental Schedule I or J regarding his new employment leaves the court unable to determine the Debtors's current financial reality. Failing to provide the necessary documentation to determine the Debtor's disposable income raises concerns as to whether the Debtor's plan is feasible or viable.

The Plan does not comply with 11 U.S.C. §§ 1325(b) and 1325(a)(6). 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.

3.	**14-31712-E-13 DPC-1**	**JASON LYNCH AND AMANDA GIBSON C. Anthony Hughes**	**OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-14-15 [14]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is $125.00 delinquent in the plan payments to the Trustee with the next scheduled payment of $125.00 due on January 25, 2015. The Debtor's Plan in § 1.01 calls for payments to be received by the Trustee not later then the 25th day of each month beginning the month after the order for relief under Chapter 13. As from the date of the instant motion the Debtor has paid $0.00 into the Plan.

2. The Debtor failed to appear at the First Meeting of Creditors held on January 8, 2015. Furthermore, the Trustee requires more information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to March 5, 2015 at 10:30 A.M.

3. The documents the Debtor has filed with court lack information that may be required for the Court to confirm the Debtor's plan. Specifically:

A. The Debtor's Statement of Financial Affairs, Question 3(a) shows no payments within 90 days of filing of aggregate value $600.00 or more (Dckt. 1, page 32). However, the Trustee received a certificate of title and correspondence indicating a commercial lien holder released their interest on a 2004 Toyota Tundra on December 29, 2014. Therefore, the Trustee does not know what amount the Debtor may have paid creditors on that lien in the last 90 days.

B. The Debtor's Statement of Financial Affairs, Question 3(c) discloses a $2,000.00 payment to individuals with the same surname as the Debtor within the last year. However, the Debtor does not identify their relationship with the Transferee or the date of transfer.

C. Debtor's Schedule B does not provide sufficient information on the Debtors' vehicles for the Trustee to estimate their value.

Discussion

The Trustee's objections are well-taken. As to date the Debtor has not complied with his own plan as a number of arrearages continue to accumulate. The Debtor currently owes the Trustee $250.00 with another payment coming due on February 25, 2015. The Debtor's plan cannot be confirmed until any fee, charge, or amount required under the plan has been paid 11 U.S.C. § 1325(a)(2). The Court is further concerned as to whether the Debtor can comply with 11 U.S.C. § 1325(a)(6) in being able to make said payments.

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

The Trustee's final objection was that the Debtor's has a lack of information on his petition. First, the Debtor has apparently made payments to creditors in the past 90 days (Dckt. 1, page 32), but fails to provide information on to how much. Without knowing this payment amount the court cannot determine the Debtor's current financial reality.

The court is also concerned with the Debtor's transfer of $2,000.00 to individuals with the same surname as the Debtor. Dckt. 1, page 32. The transfer raises concerns of a potential fraudulent transfer under 11 U.S.C. §

548. Without having appeared at the 341 Meeting, the Trustee has not had the opportunity to question the Debtor about such transfer.

Finally, the Trustee's objection to the Debtor's Schedule B for lack of information does not raise the same concerns as the Trustee's other objections. Here, the Debtor provides the make, model, year, and mileage of both cars. The court is unsure what other information the Trustee requires as to the vehicles to determine their valuation. Therefore, this aspect of the objection is overruled.

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.

4. 10-20818-E-13 ROBERT/RACHEL RUSSELL
WW-6 Mark Wolff

MOTION FOR SUBSTITUTION AND SUGGESTION OF DEATH
1-27-15 [85]

Tentative Ruling: The Motion for Substitution 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 27, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Substitution 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

The Motion to Substitute is granted.

Joint Debtor, Rachel Russell, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Robert Russell. The Motion seeks appointment of the personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014.

The Debtors filed for relief under Chapter 13 on January 14, 2010. On September 23, 2010, the Debtor's Chapter 13 Plan was confirmed. On August 20, 2014, the debtor passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed as part of the instant Motion on January 27, 2015. Dckt. No 85. 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.

On January 14, 2015, the Bankruptcy Notice Center sent a Notice to Debtor of Completed Play Payments and of Obligation to File Documents. Dckt. 83.

On February 3, 2015, David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion.

DISCUSSION

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

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 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, Ms. Russell has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. No 85. 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, Rachel Russell, 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, Robert Russell. 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 Rachel Russell is substituted as the representative of Robert Russell in this Chapter 13 case.

5. 15-20119-E-13 GLENN/ROSEMARIE VILLALUNA — MOTION TO VALUE COLLATERAL OF BANK OF AMERICA HOME LOANS AND/OR MOTION TO AVOID LIEN OF BANK OF AMERICA HOME LOANS
BMV-1 Bert Vega — 1-16-15 [14]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 16, 2015. By the court's calculation, 25 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 is denied without prejudice.

The Motion to Value filed by Glenn Villaluna and Rosemarie Cantiller ("Debtor") to value the secured claim of Bank of America Home Loans, a Division of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. FN.1.

FN.1. The court notes that the Debtor titled this a "Motion for an Order to Value Collateral and Avoid Second Lien of Bank of America Home Loans, A Division of Bank of America, N.A. Under 11 U.S.C. § 506(a) and Bankruptcy Procedure 3012." This Motion seeks relief pursuant to 11 U.S.C. § 506(a) which is to value the secured claim of this credit, not lien avoidance.

However, the Debtor has not provided sufficient notice. The Notice of Hearing states that the Motion is being made pursuant to Local Bankr. R. 9014-1(f)(1) which requires 28 days notice. The Debtor has only provided 25 days notice which is insufficient. The Debtor improperly noticed the parties served that 14 day written opposition was required when the Debtor had not required the requisite 28 days service. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Glenn Villaluna and Rosemarie Cantiller ("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 Glenn Villaluna and Rosemarie Cantiller ("Debtor") to value the secured claim of Bank of America Home Loans, a Division of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 511 Cove Court, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $389,000.00 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 that the Debtor improperly titled this a "Motion for an Order to Value Collateral and Avoid Second Lien of Bank of America Home Loans, A Division of Bank of America, N.A. Under 11 U.S.C. § 506(a) and Bankruptcy Procedure 3012." This Motion seeks relief pursuant to 11 U.S.C. § 506(a) which is to value the secured claim of this credit, not lien avoidance.

Debtor offers the appraisal of Victor H. Arias, a certified residential appraiser. Dckt. ,Exhibit A. However, the Debtor does not provide the Declaration of Mr. Arias to authenticate the appraisal. Therefore, the court will base its analysis on the value of the Property based on Debtor's statement of value under penalty of perjury on Schedule A.

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

Before discussing the valuation, the court notes that the Debtor's prayer requests improper relief. First, the Debtor requests that the Creditor's "lien" be determined to be completely unsecured. This is improper terminology. The lien is not what is secured, it is the claim/debt that is secured and valued. The lien is the obligation. Second, the Debtor requests that the corresponding proof of claim be deemed general unsecured. The Debtor does not cite to the proof of claim. Lastly, the Debtor requests the court to order that should the case be dismissed or converted that the lien remain a valid encumbrance. This is improper because the determination of the validity of an encumbrance would require an adversary proceeding, pursuant to Fed. R. Bankr. P. 7004.

The senior in priority first deed of trust secures a claim with a balance of approximately $412,170.31. Creditor's second deed of trust secures a claim with a balance of approximately $49,920.98. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall 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 Glenn Villaluna and Rosemarie Cantiller ("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 Home Loans, a Division of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 511 Cove Court, 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 $389,000.00 and is encumbered

by senior lien securing claims in the amount of $412,170.31 which exceeds the value of the Property which is subject to Creditor's lien.

6. 15-20119-E-13 BMV-2 GLENN/ROSEMARIE VILLALUNA Bert Vega

MOTION TO VALUE COLLATERAL AND/OR TO AVOID LIEN OF CHASE HOME FINANCE, LLC 1-16-15 [19]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 16, 2015. By the court's calculation, 25 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 is denied without prejudice

The Motion to Value filed by Glenn Villaluna and Rosemarie Cantiller ("Debtor") to value the secured claim of Chase Home Finance LLC, a Division of J.P. Morgan Chase, Inc.("Creditor") is accompanied by Debtor's declaration. FN.1.

FN.1. The court notes that the Debtor improperly titled this a "Motion for an Order to Value Collateral and Avoid Second Lien of Chase Home Finance LLC, a Division of J.P. Morgan Chase, Inc. Under 11 U.S.C. § 506(a) and Bankruptcy Procedure 3012." This Motion seeks relief pursuant to 11 U.S.C. § 506(a) which is to value the secured claim of this credit, not lien avoidance.

However, the Debtor has not provided sufficient notice. The Notice of Hearing states that the Motion is being made pursuant to Local Bankr. R. 9014-1(f)(1) which requires 28 days notice. The Debtor has only provided 25 days notice which is insufficient. The Debtor improperly noticed the parties served that 14 day written opposition was required when the Debtor had not required the requisite 28 days service. Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Glenn Villaluna and Rosemarie Cantiller ("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 Glenn Villaluna and Rosemarie Cantiller ("Debtor") to value the secured claim of Chase Home Finance LLC, a Division of J.P. Morgan Chase, Inc. ("Creditor") is accompanied by Debtor's declaration. FN.1. Debtor is the owner of the subject real property commonly known as 511 Cove Court, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $389,000.00 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 that the Debtor improperly titled this a "Motion for an Order to Value Collateral and Avoid Second Lien of Bank of America Home Loans, A Division of Bank of America, N.A. Under 11 U.S.C. § 506(a) and Bankruptcy Procedure 3012." This Motion seeks relief pursuant to 11 U.S.C. § 506(a) which is to value the secured claim of this credit, not lien avoidance.

Debtor offers the appraisal of Victor H. Arias, a certified residential appraiser. Dckt. ,Exhibit A. However, the Debtor does not provide the Declaration of Mr. Arias to authenticate the appraisal. Therefore, the court will base its analysis on the value of the Property based on the statement of value under penalty of perjury by the Debtors on Schedule A.

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

Before discussing the valuation, the court notes that the Debtor's prayer requests improper relief. First, the Debtor requests that the Creditor's "lien" be determined to be completely unsecured. This is improper terminology. The lien is not what is secured, it is the claim/debt that is secured and valued. The lien is the obligation. Second, the Debtor requests that the corresponding proof of claim be deemed general unsecured. The Debtor does not cite to the proof of claim. Lastly, the Debtor requests the court to order that should the case be dismissed or converted that the lien remain a valid encumbrance. This is improper because the determination of the validity of an encumbrance would require an adversary proceeding, pursuant to Fed. R. Bankr. P. 7004.

The senior in priority first deed of trust secures a claim with a balance of approximately $412,170.31 and second deed of trust in the amount of $49,920.98. Creditor's third deed of trust secures a claim with a balance of approximately $19,075.76. 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 Glenn Villaluna and Rosemarie Cantiller ("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 Chase Home Finance LLC, a Division of J.P. Morgan Chase, Inc. secured by a third in priority deed of trust recorded against the real property commonly known as 511 Cove Court, 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 $389,000.00 and is encumbered by senior liens securing claims in the amount of $462,091.29 which exceeds the value of the Property which is subject to Creditor's lien.

7. 11-42820-E-13 DALE/BELINDA KEMPTON
JTN-3 Jasmin Nguyen

MOTION TO APPROVE LOAN MODIFICATION AND/OR MOTION TO INCUR DEBT
1-5-15 [34]

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to 3:00 p.m. on March 3, 2015.

The Motion to Approve Loan Modification filed by Dale and Belinda Kempton ("Debtor") seeks court approval for Debtor to incur post-petition credit. 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 from the current $989.00 a month to $817.71 a month. The terms of the modification include:

1. New Principal Balance: $181,027.70

2. Interest Rate: Interest at the rate of 4.5% will begin to accrue

on the New Principal Balance as of January 1, 2015

3. New Monthly Payment: The new monthly principal and interest payment amount is $692.78, with an escrow payment amount of approximately $124.93 for a monthly payment of $817.71. The first new monthly payment on the New Principal Balance is due on February 1, 2015 and shall be effective for 480 months.

Dckt. 37, Exhibit A.

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

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 27, 2015. Dckt. 39. The Trustee begins by stating that he has no objection to the general terms of the loan modification.

However, the Trustee is not certain if the loan modification agreement is being offered by the party who is the owner or holder of the existing note, and if it is not, the Trustee is not certain what authority the party offering the loan modification has to offer the loan modification.

Wells Fargo Bank, N.A. filed Proof of Claim No. 14 on January 16, 2012 for money loaned in the amount of $178,841.82. The claim identifies the Creditor as Wells Fargo Bank, N.A. and the claim is signed by an agent of Wells Fargo Bank, N.A.. Attachments to the claim include an Interest First Note, and a Deed of Trustee where the "Lender" is identified as Ohio Savings Bank.

The Trustee is unsure that Wells Fargo Bank, N.A. is the "Lender" in a loan modification that appears to be owed to Ohio Savings Bank. The Trustee states that he is unable to locate any transfers or assignments regarding the claim.

DEBTOR'S REPLY

The Debtor filed a reply on February 3, 2015. Dckt. 42. The Debtor states the following:

1. The Debtor requests a continuance of the hearing to allow the Debtor to get in contact with Creditor to determine the actual holder or owner of the note. Debtor's attorney has been in contact with Creditor and is currently awaiting a call back with Creditor to determine the proper creditor. The Debtor requests a continuation of the hearing to allow Debtor to obtain further documentation from Creditor to clarify their status as creditor or servicer of the subject loan.

2. The Debtor requests judicial notice that, pursuant to the actual terms of the proposed loan modification (Dckt. 39, Exhibit A, pgs 2-3) and as reiterated in the Trustee' objection, the New Principal Balance of $181,027.70 includes a deferred balance of $26,927.70. As a result, the "Interest Bearing Principal Balance" of $154,100 shall accrue interest at 4.5% beginning January 1, 2015. This distinction between "New Principal Balance" and

“Interest Bearing Principal Balance” may perhaps not have been clear in Debtor’s originally filed motion. Debtor’s expected monthly payment, beginning February 1, 2015, of $818.71 (consisting of $697.78 principal and interest and escrow of $124.93) remains the same.

DISCUSSION

A review of the Motion, objection, and reply, the court finds that continuing the hearing to allow the Debtor to continue their investigation to determine the proper holder/creditor of the lien is proper.

Therefore, the court continues the hearing to 3:00 p.m. on February 24, 2015. The Debtor shall file and serve supplemental pleadings on or before February 17, 2015. Any replies or objections shall be filed on or before February 24, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Dale and Belinda Kempton having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on March 3, 2015.
>
> **IT IS FURTHER ORDERED** that Debtor shall file and serve supplemental pleadings on or before February 17, 2015. Any replies or objections shall be filed on or before February 24, 2015.

8. 14-22527-E-13 MARK/PATRICIA HARLAND — MOTION TO VALUE COLLATERAL OF RTR CAPITAL II, LP
JMC-3 Joseph Canning — 1-6-15 [56]

Final Ruling: No appearance at the February 10, 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, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 35 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 RTR Capital II, LP ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Mark and Patricia Harland ("Debtor") to value the secured claim of RTR Capital II, LP ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 341 Honeysuckle Drive, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $238,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 2 filed by Real Time Resolutions, Inc. is the claim which may be the subject of the present Motion. Attached to the Proof of Claim is the Deed of Trust which lists "Long Beach Mortgage Company" as the lender. Also attached to the Proof of Claim is a Collection Agreement between RTR Capital II, LP and Real Time Resolutions, Inc. which purports that RTR Capital II, LP is the owner of the note.

However, given that the Proof of Claim is filed under penalty of perjury, the court finds that for purposes of the instant Motion, that the Creditor is in fact the holder of the claim.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $363,446.00. Creditor's second deed of trust secures a claim with a balance of approximately $103,123.46. 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 Mark and Patricia Harland ("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 RTR Capital II, LP secured by a second in priority deed of trust recorded against the real property commonly known as , 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 $238,000.00 and is encumbered by senior liens securing claims in the amount of $363,446.00, which exceed the value of the Property which is subject to Creditor's lien.

9. 14-30033-E-13 ERIK/TRACY YOUDAL
PD-1 Gerald Glazer

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A. 11-13-14 [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 Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on November 13, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

JPMorgan Chase Bank, National Association ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtors' Chapter 13 Plan cannot be confirmed because it does not provide for the full value of Creditor's claim. 11 U.S.C. § 132(a)(5)(B)(ii) requires a debtor's Chapter 13 Plan to distribute at least the allowed amount of a creditor's secured claim. The Debtors' Plan cannot be confirmed as proposed because it fails to properly provide for the full cure of Creditor's pre-petition arrears. Creditor's claim for pre-petition arrears is in the total amount of $4,681.88. However, the Debtors' Chapter 13 Plan provides for the cure of only $3,591.22. As the Debtors' Plan fails to provide for a full cure of Creditor's pre-petition arrears, it fails to satisfy 11 U.S.C.

§ 1325(a)(5)(B)(ii) and cannot be confirmed as proposed.

2. Debtors' Chapter 13 Plan cannot be confirmed because it does not promptly cure Creditor's pre-petition arrears as required under 11 U.S.C. § 1322(b)(5). Creditor's secured claim consists of $4,681.88 in pre-petition arrears, however, Debtors' Plan provides for the cure of only $3,591.22 in arrears, and only proposes to begin paying those arrears in month 13 of the Plan. Debtors will have to increase their monthly payment through the Chapter 13 Plan to Creditor to approximately $78.03 per month in order to cure Creditor's pre-petition arrears over a period not to exceed sixty months. As the Debtor's Plan fails to promptly cure Creditor's pre-petition arrears, it cannot be confirmed as proposed.

3. Debtors' chapter 13 Plan cannot be confirmed because it is not feasible. First, Debtors allege that they are participating in a Keep Your Home California Program, which will pay Creditor's ongoing post-petition payments for one year. However, the Debtors have failed to provide any substantive information about this program or evidence supporting that they have been accepted to participate in the program. This is important as review of the Keep Your Home California Program shows that there are several programs available, each with its own eligibility requirements. Several of these programs preclude a participant from being in "active bankruptcy." It is unclear from the information provided what program the Debtors are participating in and what impact the present bankruptcy filing will have on their eligibility to participate in the program. Absent this information, it is unclear how the present filing will impact Debtors' income. If the Debtors are no longer eligible to participate in the Keep Your Home California Program, the Plan as proposed is infeasible and cannot be confirmed. Additionally, according the Debtors' Plan, the Keep Your Home California Program only covers one year of mortgage payments. Debtors' Plan states that Tracy Youdal will obtain employment sufficient to make the ongoing post-petition payments at that time. However, while it is possible, future employment is only speculative at this time. Given that Tracy Youdal is not currently employed and the feasibility of the Plan relies on her future, speculative employment, the Debtors' Plan does not have a reasonable likelihood of success, and cannot be confirmed.

DECEMBER 9, 2014 HEARING

At the hearing, the court continued the hearing the February 10, 2015 to allow the Debtors to file supplemental pleadings to try and resolve the Creditor's objections. Dckt. 21.

JANUARY 13, 2015 STATUS REPORT

On January 13, 2015, the Debtors filed a Status Update. Dckt. 22. The Status Report states that the Debtors and Creditor have reached an agreement regarding resolving the Creditor's Objection. Debtors state that they will prepare an Order Confirming Plan in the near future that Creditor will approve before it is submitted to the Trustee's office.

JANUARY 27, 2015 STATUS REPORT

On January 27, 2015, the Debtors filed an addition Status Report. Dckt. 24. The Status Report states that an Order Approving Plan has been approved as to form by Creditor and has been submitted to the Trustee's office for

approval.

DISCUSSION

Seeing that the Debtors and Creditors have reached an agreement concerning the objections raised by the Creditor and a proposed Order to Confirm has been sent to the Trustee for approval, the objections are resolved.

Therefore, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the JPMorgan Chase Bank, National Association 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 October 7 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.

10. 14-31433-E-13 JOSEPH/NANCY ATIS **OBJECTION TO CONFIRMATION OF**
DPC-1 David Ritzinger **PLAN BY DAVID P. CUSICK**
1-14-15 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor listed his 2nd Deed of Trust to be Paid in Class 4 of the Plan, directly by the Debtor to Wells Fargo Bank. However, as of the First Meeting of Creditors held on January 8, 2015, he admitted he was not current in payments to this creditor.

2. The Debtor appears to be unable to make payments required under 11 U.S.C. § 1325(a)(6). Additionally the Debtor failed to list

expenses on Schedule J for real property taxes and auto insurance.

DISCUSSION

The Trustee's objections are well-taken. The Debtor is currently delinquent on payments to the Creditor Wells Fargo Bank as admitted by Debtor at the First Meeting of Creditors. No evidence has been provided that Debtor has cured this delinquency. This failure to be current on the Class 4 claim is a failure to comply with 11 U.S.C. § 1325(a)(2).

The Trustee's second objection raises concerns as to whether the Debtor is able to make any payments to the plan which are required under 11 U.S.C. § 1325(a)(6). The plan may not be feasible given the failure to list expenses on Schedule J for real property taxes and auto insurance, as the court cannot determine the Debtor's current financial reality. It also raises concerns over whether the Debtor is not disclosing other expenses.

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 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.

11. 14-31139-E-13 KAMELA BROWN
GDG-1 Gary Greule

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
1-12-15 [37]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 11, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is denied without prejudice

The Motion filed by Kamela Brown ("Debtor") to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Toyota Tacoma Access Cab ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $20,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). FN.1.

FN.1. The Debtor in her Declaration references Kelly Blue Book and NADA valuation in determining the value of the Vehicle. However, Debtor goes on to say "In my opinion, the replacement value for my vehicle would be no more than $20,000.00." This is the same value Debtor has for the Vehicle on her Schedule

B. Therefore, the court notes that the Debtor does not appear to be using the Kelly Blue Book valuation but instead was a reference for her to come to her own conclusion.

CREDITOR'S OBJECTION

Creditor filed an objection to the instant Motion on January 27, 2015. Dckt. 51. The Creditor objects on the following grounds:

1. Debtor has not provided sufficient admissible evidence to determine the value of the Vehicle. In paragraph 3 of Debtor's Declaration, she states that she has reviewed the Kelly Blue Book and NADA valuations. Copies of the valuation are not filed as exhibits, os it is unknown what valuations were used, i.e. trade-in, private party, retail, and what equipment was added or deleted to determine the Kelly Blue Book or NADA values. Also, it is unknown what the valuation was in each guide and what adjustments the Debtor may have made to these valuations to arrive at the value of the Vehicle.

The Creditor argues that the testimony of Debtor is not admissible and the Debtor has not submitted any admissible evidence to support her valuation of $20,000.00. The Debtor has not established that she is an expert.

Furthermore, Creditor argues that the Debtor has provided conflicting statements regarding the Vehicle and the equipment on it. Creditor alleges that the Debtor has provided varying descriptions of the Vehicle and the equipment at the time of the loan, at the Meeting of Creditors, and in the Debtor's Declaration. The Creditor argues that the discrepancies undermine the credibility of Debtor and the accuracy of any alleged valuation.

2. The proper standard for valuing the Vehicle is the retail merchant standard. The Creditor states that the Creditor cannot determine the price a retail merchant would charge pursuant to § 506(a)(2) because it is unknown what equipment the Vehicle has. It appears that the Debtor used private party values, rather than retail values to determine the value of the Vehicle.

DISCUSSION

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. On November 12, 2014, the Debtor filed this Voluntary Petition for bankruptcy under Chapter 13 of United States Code, Title 11.

B. All fees and charges of the Court and the Chapter 13 Trustee have been paid.

C. All unsecured creditors will receive at least what they would have received under a Chapter 7 liquidation bankruptcy.

D. The creditor, Schools Financial Credit Union, holds a security interest in Debtor's 2010 Toyota Tacoma Access Cab PreRunner pickup truck. The debt is provided for as a Class 2 debt in

debtor’s Chapter 13 Plan.

E. Debtor has provided an opinion of the replacement value of $20,000.00. The declaration of the Debtor filed herewith, states the vehicle make &model, milage, condition and a list of optional equipment and accessories.

F. Creditor, Schools Financial Credit Union, has filed Court Claim Number 4 on December 31, 2014.

The Debtor’s declaration does indicate that the Debtor does not have an opinion as to value, but merely that Debtor has read trade guides and is repeating a value (which may be retail, trade-in, or private party sale). That is not credible evidence for the court.

Therefore, due to the failure of the Debtor to plead with particularity, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Kamela Brown (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

12. 14-31139-E-13 KAMELA BROWN
GDG-2 Gary Greule

MOTION TO AVOID LIEN OF SPRINGLEAF FINANCIAL SERVICES, INC.
1-12-15 [41]

Final Ruling: No appearance at the February 10, 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, parties requesting special notice, and Office of the United States Trustee on January 12, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the nonpurchase-money, nonpossessory lien of Springleaf Financial Services, Inc. ("Creditor") against property of Kamela Brown ("Debtor") commonly known as Sharp television (the "Property").

Debtor asserts that the Creditor holds a security interest in household goods as collateral for a nonpurchase money, nonpossessory loan of money. The Creditor filed a Proof of Claim No. 1 in the amount of $3,499.14. The attachment to the Proof of Claim No. 1 is a Loan Agreement and Disclosure Statement which lists the value of the Property as a combined $3,000.00.

Pursuant to the Debtor's Schedule B, the subject Property, along with one bedroom set and one sofa, has a combined approximate value of $2,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(3) in the amount of $2,000.00 for the Property, one bedroom set, and one sofa 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 lien. Therefore, the fixing of this lien impairs the Debtor's exemption of the Property and its fixing is

avoided subject to 11 U.S.C. § 349(b)(1)(B).
The court shall issue 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 lien of Springleaf Financial Services, Inc., Proof of Claim No. 1, against the property commonly known as Sharp television, 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.

13. 14-31139-E-13 KAMELA BROWN **MOTION TO CONFIRM PLAN**
GDG-3 Gary Greule **12-28-14 [30]**

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 December 28, 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). 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.

Kamela Brown ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 28, 2014. Dckt. 30.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 27, 2015. Dckt. 48. The Trustee objects on the following grounds:

1. 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 Schools Financial Credit Union and the Motion to Avoid Lien of Springleaf Financial Services, which are both set for hearing on February 10, 2015. If the motions are not granted, Debtor's plan does not have sufficient monies to pay the claims in full and theretofore should be denied confirmation.

SCHOOLS FINANCIAL CREDIT UNION'S OBJECTION

Schools Financial Credit Union ("Creditor") filed an objection to the instant Motion on January 27, 2015. Dckt. 55. The Creditor objects on the following grounds:

1. The first amended Chapter 13 Plan is not feasible. The Plan depends on valuing the collateral of Creditor at $10,000.00 and avoiding the lien of Springleaf Financial Services, Inc. Debtor did not file a motion to avoid the lien of Creditor but the value stated in the motion is $20,000.00, not $10,000.00 as stated in the plan. The Creditor states that the plan does not comply with 11 U.S.C. § 1325(a)(6).

2. The Creditor objects to the treatment of its secured claim. The Creditor contends that the plan does not comply with 11 U.S.C. § 1325(a)(5). The Creditor does not consent to a dividend of $375.00 per month to pay its secured claim. The Creditor does not consent to a value of $10,000.00 for the value of its security. The plan does not provide for payment in full of the secured claim of $31,182.54, plus interest at 4.5%. It is the opinion of the Creditor that neither the First Amended Plan nor the Motion to Value Collateral propose to value the collateral in accordance with 11 U.S.C. § 506(a)(2).

DISCUSSION

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

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

First, the court denied the Debtor's Motion to Value the Collateral of Creditor on February 10, 2015. Because the plan relies on the valuation of the claim and the motion was denied, the plan cannot be confirmed.

Second, as to the Creditor's second objection, because the Motion to Value the Collateral of Creditor, the treatment in the proposed plan is not proper. Therefore, because the proposed plan does not properly provide for the Creditor's full secured claim, the plan cannot be confirmed.

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.

14. 11-44540-E-13 MERCEDES PEREZ **MOTION TO MODIFY PLAN**
DN-8 Dan Nelson **12-29-14 [177]**

Final Ruling: No appearance at the February 10, 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 29, 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 29, 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.

15. 14-21142-E-13 LBG-1 | **THOMAS LISLE AND BARBARA TREAT** | **MOTION TO VACATE**
Lucas Garcia | **1-12-15 [95]**

Final Ruling: No appearance at the February 10, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 12, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Vacate 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 Vacate is granted.

Thomas Lisle and Barbara Treat ("Debtors") filed the instant Motion to Reconsider or Vacate on January 12, 2015. Dckt. 95.

The instant case was commenced on February 6, 2014. On March 17, 2014, the Debtors filed a Motion to Value Secured Portion of Claim of PNC Bank, National Association (DCN: LBG-001). The court conducted a hearing on April 22, 2014. Dckt. 46. At the hearing, the court granted the Motion to Value, valuing the secured claim of PNC Bank, National Association at $0.00. Dckt. 51.

The Debtors request that the court reconsider the order based on the following:

1. At the time of filing of the Motion to Value, the Debtors were both alive and in good health and intended to keep the home. This made the filing of Motion in question necessary to the requirements of the plan.

2. Subsequent to that time the terminal medical condition with subsequently claimed the life of Mr. Lisle became known to the Debtors.

3. The Debtors then made the decision and realization that Mrs. Treat would not be able and likely would not desire to keep the home, and would therefore not like to continue with the plan.

4. The Debtors later (between late-September and mid-October) became aware that a settlement in the personal injury case was now likely anc accelerated based on Mr. Lisle's condition. However, this settlement would not allow Mrs. Treat to keep the home.

5. These new developments (medical condition and inability to maintain the home even with the valuation of PNC Bank, N.A.'s claim) are both unknown at the time of the filing of the case and if they had been known at the time of the filing the case the Debtors would not have intended to retain the property and therefore would have surrendered the property.

6. If this had been done then, the Motion to Value the claim would not have been granted and PNC Bank, N.A. would not have been allowed a general unsecured claim.

Debtors request that, for the aforementioned reasons, the court vacate the Order valuing the claim of PNC Bank, N.A. and returning PNC Bank, N.A. to their secured status for the purpose of facilitating the surrender of the property in a modified plan.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a notice of non-opposition on February 4, 2015 to the instant Motion.

APPLICABLE LAW

The court will construe the motion as a motion to alter or amend the Order, pursuant to Federal Rule of Civil Procedure 59(e), incorporated herein by Federal Rule of Bankruptcy Procedure 9023, or in the alternative, as a motion for relief from the Order, pursuant to Federal Rule of Civil Procedure 60(b)(6), incorporated herein by Federal Rule of Bankruptcy Procedure 9024.

A Rule 59(e) motion "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). "[A] motion for reconsideration is not permitted (a) to assert new legal theories that could just as well have been raised before the initial hearing; (b) to present new facts which could have been presented before the initial hearing; or (c) to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Hawaii 1990).

A request for relief under Federal Rule of Civil Procedure 60(b)(6) is typically granted sparingly, in the most extraordinary circumstances in which parties were barred from acting in a timely manner to correct an erroneous judgment. Although Rule 60(b) should be liberally applied to accomplish justice, *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc*. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007), at the same time, it should be "used sparingly as an equitable remedy to prevent manifest injustice and is to be

utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." Id. (citations omitted, internal quotation marks omitted).

DISCUSSION

Upon a review of the Motion and the Trustee's non-opposition, the court finds that proper grounds exist to vacate the Order valuing PNC Bank, N.A.'s secured claim. Dckt. 51.

The Debtors have properly plead newly discovered evidence that, with reasonable diligence, could not have been discovered. The terminal medical condition of the deceased co-Debtor could not have been anticipated at the time the court issued the Order valuing PNC Bank, N.A.'s claim. The extraordinary circumstances of the co-Debtor's diagnosis and his unfortunate later passing are sufficient factual grounds under Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60.

Additionally, the Trustee's non-opposition further supports the court's conclusion that sufficient extraordinary facts exist to vacate the court's prior order.

Therefore, the court grants the instant Motion. The Order entered on April 28, 2014 valuing PNC Bank, N.A.'s second deed of trust recorded against the real property commonly known as 23805 Lakeview Ct., Auburn, California at $0.00 (Dckt. 51) is vacated. PNC Bank, N.A.'s secured claim is restored to its full secured value.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Vacate filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted.
>
> **IT IS FURTHER ORDERED** that the Order entered on April 28, 2014 valuing PNC Bank, N.A.'s second deed of trust recorded against the real property commonly known as 23805 Lakeview Ct., Auburn, California at $0.00 (Dckt. 51) is vacated.

16. 12-28547-E-13 PGM-7 — RUBEN GUTIERREZ AND GRACIELA GUITIERREZ — Peter Macaluso — MOTION TO APPROVE LOAN MODIFICATION — 1-8-15 [99]

Final Ruling: No appearance at the February 10, 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 January 8, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to 3:00 p.m. on March 3, 2015.

The Motion to Approve Loan Modification filed by Ruben and Graciela Gutierrez ("Debtor") seeks court approval for Debtor to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $2,896.40 a month. The terms of the modification are as follow:

1. The modified principal balance of the Note will include all amount and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges), less any amount paid to the Creditor but not previously credited to the Debtor's loan.

2. The Principal Balance will be $431,239.77.

3. $34,429.77 of the new Principal Balance shall be deferred and now interest or monthly payments will be made on this amount.

4. The new Principal Balance, less the deferred principal balance, shall be referred to as the "Interest Bearing Principal Balance" and this amount is $396,900.00.

5. Interest rate of 4.625% will begin to accrue on the new Principal Balance as of December 1, 2014.

6. The maturity date will be July 1, 2037.

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

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on January 26, 2015. Dckt. 105. The Trustee states that he is uncertain of which loan this modification applies to. The loan modification document (Dckt. 102) filed in support of, names Ocwen Loan Servicing, LLC. According to the Trustee's records, the first deed of trust is being held by creditor Deutsche Bank National Trust Company, as Trustee, whom filed proof of claim No. 9-1 on June 28, 2012. The Trustee believes loan modification to be reasonable and does not oppose to the loan modification otherwise.

DEBTOR'S REPLY

The Debtor filed a reply on February 3, 2015. Dckt. 111. The Debtor states that:

1. The Proof of Claim reflects that GMAC, LLC is where the notices and payments should be sent, which was filed by Pite Duncan, LLP.

2. The phone number listed on the Proof of Claim forwards the line to a second phone number belonging to Ocwen Loan Servicing, LLC., which is the granted to the Trial Loan Modification, and whom is listed as the "Servicer" of the loan. In this case, Ocwen purports to have the authority to modify the loan pursuant to the servicing agreement. The Debtor requests that Ocwen be ordered to provide the servicing agreement to insure the authority to modify the loan as provided in the modification agreement.

DISCUSSION

A review of the Motion, the loan modification, and the Proof of Claim raises the same concerns for the court as noted in the Trustee's response. The court cannot tell whether Ocwen Loan Servicing, LLC has the authority as either the holder or the servicer of the loan to enter into modifications.

As the court has repeatedly said, the court will not issue "maybe effective" orders in which debtors rely on, only to learn later that the true holder of a loan was not a party to the motion. Here, the Debtor admits to not knowing whether Ocwen Loan Servicing, LLC does, in fact, have the authority to enter into any sort of loan modification agreement.

If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a modification, only to discover

that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a modification would be an unhappy day not only for the Debtor, but her counsel as well – most likely leaving the Debtor unable to pay under the modification.

The Debtor does not provide any evidence that they have attempted to actually acquire documentation as to whether Ocwen Loan Servicing, LLC has the authority to enter into a loan modification. All the Debtor states in the reply is that they made a phone call to the listed number on the Proof of Claim. Instead, the Debtor request that the court do the "leg-work" for the Debtor and order Ocwen Loan Servicing, LLC to turn over the requested documentation. The court does not provide such associate attorney and paralegal services to parties.

Furthermore, there is Fed. R. Bankr. P. 2004 that provides the Debtor an explicit avenue for discovery. Debtor and Debtor's counsel provides no evidence that they attempted to utilize a deposition pursuant to Fed. R. Bankr. P. 2004 to discover who the true creditor is. The Supreme Court, in their infinite wisdom, provided this mechanism for parties in bankruptcy to have the opportunity to perform discovery of necessary information. The Debtor and Debtor's counsel should utilize such mechanisms before requesting the court to do the discovery for them.

The court continues the hearing to give the Debtor the opportunity to contact Ocwen Loan Servicing, LLC to get the necessary documentation and evidence showing that Ocwen Loan Servicing, LLC has the authority to enter into a loan modification.

Therefore, the hearing is continued to 3:00 p.m. on March 3, 2015. Debtor shall file and serve supplemental pleadings on or before February 17, 2015. Any replies or objections shall be filed on or before February 24, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Ruben and Graciela Gutierrez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on March 3, 2015.
>
> **IT IS FURTHER ORDERED** that Debtor shall file and serve supplemental pleadings on or before February 17, 2015. Any replies or objections shall be filed on or before February 24, 2015.

17. 14-28649-E-13 JSO-3 THOMAS/HEIDI CARTER Jeffrey Ogilvie

MOTION TO VALUE COLLATERAL OF HERZOG FAMILY REVOCABLE TRUST OF 2004
1-8-15 [44]

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 Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 8, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is denied without prejudice.

The Motion to Value filed by Thomas and Heidi Carter ("Debtor") to value the secured claim of Herzog Family Revocable Trust of 2004 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 26846 Aslan Rd., Shingletown, California ("Property"). Debtor seeks to value the Property at a fair market value of $240,000.00 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.

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Herzog Family Revocable Trust of 2004." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors. FN.1.

FN.1. If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a plan, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a Chapter 13 Plan would be an unhappy day not only for the Debtor, but her counsel as well – most likely leaving the Debtor unable to either "lien strip" the true creditor's security interest or no having the benefit of paying a reduced secured claim.

The court also notes that if a trust is the "creditor," then the relief is sought against the trustee of the trust. A trust is not a separate legal entity to be sued as would be a corporation, partnership, or limited liability company. *Portico Management Group, LLC v. Harrison*, 202 Cal. App. 4th 464 (2011).

No Proof of Claim Filed

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

DISCUSSION

As discussed supra, the court cannot determine if “Herzog Family Revocable Trust of 2004" has a valid security interest in the Property. Further, the “Trust” is not the creditor, but it is the trustee of the trust who must be “sued.”

The Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Thomas and Heidi Carter (“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.

18. 14-30855-E-13 RICHARD CHAIREZ — MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
HWW-2 Hank Walth — 1-7-15 [28]

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, Internal Revenue Service, and Office of the United States Trustee on January 7, 2015. By the court's calculation, 34 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 is denied without prejudice.

Richard Chairez ("Debtor") filed the instant Motion to Value Collateral of Internal Revenue Service on January 7, 2015. Dckt. 28.

MOTION

On July 9, 2014, the Internal Revenue Service filed a tax lien in Sacramento County for personal income taxes the Debtor owes for tax years:

2008.....$ 4,755.84

2010.....$18,082.24

2011.....$12,253.53, and

2012.....$ 6,728.21.

Dckt. 31, Exhibit 1, 2, and 3. The total owed to the Internal Revenue Service is $41,819.82.

Debtor states that pursuant to 11 U.S.C. § 506(a), the Internal Revenue Service lien is a secured claim to the extent of the value of the property of the Debtor's estate.

PROPERTY OF THE ESTATE SUBJECT TO SECURED CLAIM

Debtor lists a one-half undivided interest in his home, commonly known as 3589 Rio Pacifica Way, Sacramento, California ("Residence"). Debtor seeks to value the **"entire undivided interest"** of the Residence at a fair market value of $194,000.00 as of the petition filing date. The court interprets this statement to be the value of the Debtor's undivided 50% undivided interest in the property – not the value of the entire property.

As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor states that the Residence is secured by a deed of trust in the approximate amount of $200,400.00, and real property taxes in the approximate amount of $6,000.00. Dckt. 31, Exhibit 5. Debtor argues that there is no equity in the Residence.

As to personal property, Debtor states that all personal property has a gross value of $15,183.00. All of the property is unencumbered except for the PG&E retirement plan valued at $6,989.00, which has a loan balance of $5,361.00, for a net value of $1,628.00. Dckt. 31, Exhibit 7. The Debtor states that he has a one-half interest in the household goods and furnishings valued at $2,700.00, for a net value to the Debtor of $1,350.00. Dckt. 31, Exhibit 8. The equity in the Debtor's personal property, therefore, is $8,472.00 ($15,183.00 listed on Schedule B minus $5,361.00 retirement loan = $9,822.00, minus $1,350.00 on-half interest in household goods and furnishing = $8,472.00).

Debtor concludes by stating that based on the above analysis, that the secured claim of the Internal Revenue Service should be valued at $8,472.00.

APPLICABLE LAW

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

Debtor's valuation is based on the assumption that there is no equity in the Residence and, therefore, only the Debtor's personal property has equity for the Internal Revenue Service to be secured by.

However, the Debtor appears to be attempting to use the full value of the deed of trust against his one-half interest in the Residence. A review of the Proof of Claim No. 4 filed by CitiMortgage, Inc. lists both Debtor and Debtor's co-owner on the deed of trust. Debtor appears to be attempting to use both his and his co-owner's obligation to state that there is no equity in the Residence as to his interest. This appears to be improper.

On Proof of Claim No. 5, the Internal Revenue Service asserts a secured claim for only $8,194.00. Debtor seeks to have the court overrule the Proof of Claim and increase the secured claim to $8,472.00.

The Motion is denied as moot, the Creditor having asserted a proof of claim for less than the amount computed by the Debtor.

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 Richard Chairez ("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, Creditor having filed Proof of Claim No. 9, asserting a secured claim in this case of $8,194.00.

19. 11-42659-E-13 GARAY/KAREN HARPER — MOTION TO APPROVE LOAN MODIFICATION
SDB-4 Scott de Bie — 1-6-15 [103]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Garay and Karen Harper ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $4,135.26 a month to $2,895.85 a month. The modification terms are as follows:

1. As of June 1, 2014, the amount payable under the Note and the Security Instrument is $1,002,995.73, consisting of the unpaied amounts loaned to Debtor by Creditor plus any interest and other amounts capitalized.

2. Debtor promises to pay the unpaid principal balance, plus interest, in order of the Creditor. Interest will be charged on the unpaid

principal balance at the yearly rate of 2.240% from June 1, 2014. Debtor promises to make monthly payments of interest of $1,872.26 beginning on the 1st day of July 2014, and continuing thereafter on the same day of each succeeding month until June 1, 2015. After expiration of the modification period, the interest rate Debtor will pay will be determined in accordance with the terms of the original Note. If on October 1, 2036, the maturity date, Debtor still owes amounts under the Note and the Security Instrument, as amended by the modification, Debtor will pay these amounts in full on the maturity date

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

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 27, 2015. Dckt. 108. The Trustee first states that he has no objection to the terms of the loan modification.

However, the Trustee is uncertain whether Creditor is the actual creditor having a claim in this case or has the authority to enter into the loan modification. The loan modification agreement (Dckt. 106, Exhibit A) identifies the Lender as Nationstar Mortgage, LLC. The prior Motion to Approve Loan Modification filed by Nationstar Mortgage, LLC (Dckt. 79), which was subsequently withdrawn, included Exhibits 1 though 4 (Dckt. 82) consisting of Loan Modification Agreement, Note, Deed of Trust, and Assignment. The Letter of Acknowledgment (Dckt. 82, Exhibit 1, page 6) indicates the loan is serviced by Nationstar Mortgage, LLC. The original Interest Only Adjustable Rate Note (Exhibit 2, pages 8-12) appears to be endorsed in blank and identifies the original Lender as Countrywide Home Loans, Inc. as does the Deed of Trustee, Fixed/Adjustable Rate Rider and Prepayment Penalty Addendum (Dckt. 82, Exhibit 3, pgs. 13-36).

Creditor filed an Assignment of Deed of Trust indicating the Deed of Trust was assigned to Deutsche Bank National Trust Company, As Trustee for Holder of the GSR Mortgage Loan Trust 2007-ARI, and whose address is C/O BAC, M/C:CA6-914-01-43, 1800 Tapo Canyon Road, Simi Valley, California. Dckt. 82, Exhibit 4.

There is no evidence showing that Nationstar is the creditor. Neither the Creditor nor Debtor testify that money was borrowed from, a promissory note was signed naming, or that a promissory not was assigned or transferred to Nationstar Mortgage, LLC. No proof of claim has been filed.

DEBTOR'S REPLY

Debtor filed a reply on February 2, 2015. Dckt. 114. The Debtor states the following:

1. The document referenced by the Trustee in his objection is an assignment of the deed of trust to Deutsche Bank recorded on December 26, 2013. However, subsequently, on August 20, 2013, an assignment was recorded showing a transfer of "all beneficial interest" under the deed of trust to Nationstar Mortgage, LLC. Dckt, 115, Exhibit B.

2. It is upon the assignment recorded August 20, 2013 that Debtor relies in submitting their request for approval of the loan modification.

DISCUSSION

A review of the Assignment of the Deed of Trust submitted by the Debtor in their reply shows that the original lender was “MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS NOMINEE FOR COUNTRYWIDE HOME LOANS, INC.” The Assignment states that the holder of the Deed of Trust “does hereby grant, sell, assign, transfer, and convey unto NATIONSTAR MORTGAGE, LLC. . .all beneficial interest under that certain Deed of Trust....” Dckt. 115, Exhibit B.

Based on this assignment, the court is satisfied that Nationstar Mortgage, LLC is the holder of the Deed of Trust and has the authority to enter into the loan modification.

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 Garay and Karen Harper 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 Garay and Karen Harper ("Debtor") to amend the terms of the loan with Nationstar Mortgage LLC, which is secured by the real property commonly known as 4900 Canyon Ranch Road, Shingle Springs, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 106.

20. 14-31362-E-13 SIPRIANO ARRIAGA **OBJECTION TO CONFIRMATION OF**
DPC-1 Scott Johnson **PLAN BY DAVID CUSICK**
1-14-15 [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, Chapter 13 Trustee, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is $1,105.00 delinquent in plan payments to the Trustee as of January 14, 2015. The next scheduled payment of $1,105.00 came due on January 25, 2015. The Plan in § 1.01 calls for payments to be received by the Trustee not later then the 25th day of each month after the order for relief under Chapter 13. The Debtor has paid $0.00 into the Plan to date.

2. The Debtor failed to appear at the First Meeting of Creditors held on January 8, 2015. The Trustee does not have suitable information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to March 5, 2015 at 10:30 A.M.

DISCUSSION

The Trustee's objections are well-taken. As to date the Debtor has not complied with his own plan as the Debtor currently owes the Trustee $2,210.00 with another payment coming due on February 25, 2015. No evidence has been submitted to show that the delinquency has been cured. The Debtor's plan cannot be confirmed until any fee, charge, or amount required under the plan has been paid 11 U.S.C. § 1325(a)(2). The court is further concerned as to whether the Debtor can comply with 11 U.S.C. § 1325(a)(6) in being able to make said payments.

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

While the Meeting of Creditors was continued until March 5, 2015 at 10:30 a.m., the Trustee's objections raise legitimate concerns over the viability and feasibility of the proposed plan, especially with the Trustee not having the opportunity to get all necessary information from Debtor.

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.

21. 14-29067-E-13 EARLINE MILES
Mary Ellen Terranella

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC
10-23-14 [22]

Final Ruling: No appearance at the February 10, 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 October 23, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is overrule the Objection, Nationstar Mortgage, LLC having filed a Notice of Withdrawal.

Nationstar Mortgage, LLC, servicer for The Bank of New York Mellon Corporation as Trustee for the Structured Asset Mortgage Investments II, Inc. Mortgage Pass-Through Certificates Series 2006-AR7 ("Creditor") opposes confirmation of the Plan on the basis that Earline Miles' ("Debtor") proposed Plan does not include the pre-petition arrearage due on the mortgage held by Creditor. Debtor's plan states that Debtor is not in default of the plan, although Debtor's pre-petition arrearage owed to Creditor is $3,977.69.

NOVEMBER 18, 2014 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on December 16, 2014. Dckt. 31. The court ordered that supplemental pleadings shall be filed on or before December 5, 2014.

DEBTOR'S OPPOSITION

Debtor filed an opposition to the instant Objection on December 5, 2014. Dckt. 35.

Debtor states that she negotiated an agreement to catch up her mortgage before she filed her Chapter 13 case. The Debtor made a payment to Creditor on September 3, 2014 in the amount of $4,640.00. Debtor states that she was then instructed to make three payments of $3,864.37 each on October 3, November 3, and December 3, 2014 at which time her mortgage would be current. Debtor alleges that the Debtor made the first two payments by electronic bill pay.

When November payment was still in her account on November 10, 2014, the Debtor states that she called Creditor. Debtor states that she spoke to a

representative who indicated the fact that the first two payments were each $21.20 short and so the November payment was not accessed. The Debtor further states that the representative informed Ms. Miles that the three payments were supposed to be $3,885.57 each, not $3,864.37. However, as there were certain funds in suspense, Debtor was informed that the last of the three payments, due December 3, 2014, should be in the amount of $3,841.57. Debtor states that she made this payment on December 3, 2014 by electronic bill pay. The Debtor believes she has complied with the terms of the catch up agreement and that her mortgage is now current with no arrears.

Debtor supplies her declaration in support providing the narrative stated in the Opposition. Debtor does not provide any exhibits showing these payments nor any copy of the alleged agreement.

DECEMBER 16, 2014 HEARING

At the hearing, the court continued the hearing on the Objection to 3:00 p.m. on February 10, 2015 to allow the Debtor to file and serve an Objection to Proofs of Claim Nos. 1 and 5. Dckt. 41.

NATIONSTAR MORTGAGE, LLC'S NOTICE OF WITHDRAWAL

On January 27, 2015, Nationstar Mortgage, LLC filed a Notice of withdrawal stating that it voluntary withdraws the Objection. Dckt. 50.

DISCUSSION

Nationstar Mortgage, LLC having filed a "Withdrawal of Objection" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Motion and the plan being confirmed on February 2, 2015 (Dckt. 53), the court interpreting the "Withdrawal of Objection" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to overrule without prejudice the Objection to Confirmation, and good cause appearing, **the court overrules the Nationstar Mortgage, LLC's Objection to Confirmation**.

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

22. 14-29067-E-13 EARLINE MILES
MET-3 Mary Ellen Terranella

OBJECTION TO CLAIM OF THE BANK OF NEW YORK MELLON CORPORATION, CLAIM NUMBER 1 AND/OR OBJECTION TO CLAIM OF THE BANK OF NEW YORK MELLON CORPORATION, CLAIM NUMBER 5
1-5-15 [44]

Final Ruling: No appearance at the February 10, 2015 hearing is required.

The Debtor having filed a Withdrawal of the Objection to Proof of Claim (Dckt. 51) and an Order Confirming the Plan being entered on February 2, 2105 (Dckt. 53), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Proof of Claim was without prejudice by Movant, and the matter is removed from the calendar.**

23. 14-29671-E-13 DANNY RUE
DWR-2 Pro Se

MOTION TO VALUE COLLATERAL OF ANANA BLISS REVOCABLE LIVING TRUST
12-15-14 [59]

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 Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 12, 2015. By the court's calculation, 60 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 is denied without prejudice.

The Motion to Value filed by Danny Rue ("Debtor") to value the secured claim of Anana Bliss Revocable Living Trust ("Creditor").

However, the Debtor did not serve the Creditor. A review of the Proof of Service shows that the Debtor only served himself, the Chapter 13 Trustee, and the United States Trustee. Without giving proper notice to the Creditor, the court will not issue an order effecting the rights of the Creditor.

The court is also concerned as to whether Creditor is actually a creditor in this case with an interest in the Debtor's property. Creditor has not filed a proof of claim nor has the Debtor provided any evidence of the Creditor's interest in the property.

The court also notes that if a trust is the "creditor," then the relief is sought against the trustee of the trust. A trust is not a separate legal entity to be sued as would be a corporation, partnership, or limited liability company. *Portico Management Group, LLC v. Harrison*, 202 Cal. App. 4th 464 (2011).

Therefore, for the Debtor's failure to properly serve the Creditor, the Motion is denied without prejudice.

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

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

24. 14-29671-E-13 DANNY RUE **MOTION TO CONFIRM PLAN**
DWR-3 Pro Se **12-15-14 [51]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), 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, 57 days' notice was provided. 42 days' notice is required.

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

Danny Rue ("Debtor") filed the instant Motion to Confirm Amended Plan on December 15, 2014. Dckt. 51.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, file an objection to the instant Motion on January 27, 2015. Dckt. 74. The Trustee objects on the following grounds:

1. Debtor is $2,760.00 delinquent in plan payments to the Trustee under the most recent amended plan and the next scheduled payment of $1,380.00 is due February 25, 2015. The Debtor has paid $0.00 into the plan to date.

2. Plan relies on pending motion. 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 Anana Bliss Revocable Living Trust which is set for hearing on February 10, 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.

3. Filing Fees not paid in ful. Debtor has not complied with 11 U.S.C. § 1325(a)(2). On September 29, 2014, the court issued an Order Approving Payment of Filing Fees in Installments. Dckt. 7. According to the Order, installments were due October 9, December 1, and December 29, 2014 and January 27, 2015. Debtor has not yet paid the last installment of $79.00 due January 27, 2015.

4. No Motion for Mortgage Modification has been filed. Debtor's instant Motion indicates that he is in a mortgage loan modification. No Motion to Approve Loan Modification has been filed with the court to date. The Trustee has not received any evidence of a trial loan modification to date.

5. Debtor's Motion conflicts with the provisions of the plan as to the treatment of the mortgage creditor. Debtor's most recent plan (Dckt. 54) lists Americas Servicing in Class 4 as a direct pay. Debtor's Motion (Dckt. 51) indicates that "the $971.00 on-going mortgage payment in included in the plan payment."

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 payments and has not provided evidence that the Debtor has cured such delinquency. This is sufficient to deny confirmation.

As to the Trustee's second objection, the Motion to Value was denied on February 10, 2015 for failure to properly serve the creditor. Therefore, the Debtor cannot afford the proposed plan payments, pursuant to 11 U.S.C. § 1325(a)(6).

The Trustee's third objection is overruled as the Debtor has paid the final installment payment on February 2, 2015.

The Trustee's fourth objection raises concerns over whether the Debtor is operating under a loan modification that has yet to be approved by the court. This raises concerns about the Debtor's candor and whether the proposed plan truly reflects the Debtor's financial reality. The plan appears to rely on this modification and without court approval of the modification, the proposed plan cannot be confirmed.

Lastly, the Debtor's Motion and proposed Plan appears to propose different treatment for the Class 4 Claim. If the Americas Servicing claim is meant to be in Class 4, it would not be paid through the plan but rather outside the plan by the Debtor. However, the Debtor's Motion suggests that the claim is to be paid as part of the proposed plan. This conflicting information raises concerns over whether the proposed plan is viable when the treatment of a creditor is not universal in the Motion and proposed plan.

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.

25. 10-28775-E-13 DENNIS BOWENS — **AMENDED MOTION TO SUBSTITUTE PARTY**
PGM-2 Peter Macaluso — **1-16-15 [50]**

Tentative Ruling: 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).

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, parties requesting special notice, and Office of the United States Trustee on January 12, 2015. By the court's calculation, 29 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Substitute is granted.

Successor-in-Interest, Sandra White-Bowens, seeks an order approving the motion to substitute the Mrs. White-Bowens for the deceased Debtor, Dennis Bowens. Relief is sought pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025 and 9014.

The Debtors filed for relief under Chapter 13 on April 10, 2010. On November 22, 2013, the debtor's First Modified Chapter 13 Plan was confirmed. On October 9, 2014, the debtor passed away. Mrs. White-Bowens asserts that she is the lawful successor and representative of the Debtor.

The Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on October 31, 2014. Dckt. No 44. Mrs. White-Bowens 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.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 27, 2015. Dckt. 52. The Trustee objects on the following grounds:

1. A term life insurance policy is listed on amended Schedule B filed January 12, 2015 (Dckt. 48, pg. 6). The policy is listed as not property of the estate with a value of $0.00. The motion does not disclose who the policy belongs to or the balance of the policy. An insurance deduction is listed for the Debtor on Schedule I filed April 6, 2010 (Dckt. 1, pg. 29) in the amount of $43.88. It is unclear what kind of insurance the deduction is for. A separate health insurance deduction is listed on Schedule J filed April 6, 2010 (Dckt. 1, pg. 31) in the amount of $163.03. The surviving spouse seeks to substitute party without disclosing if anyone is receiving life insurance proceeds.

The Trustee requests that the court deny the Motion unless the life insurance policy information is fully disclosed.

DECLARATION OF MRS. WHITE-BOWENS IN RESPONSE

Mrs. White-Bowens filed a supplemental declaration on February 3, 2015. Dckt. 55. In response, Mrs. White-Bowens states the following:

1. The term life insurance policy that was listed on Schedule B of my husband's petition was a policy administered by Target, where he was employed at the time of filing.

2. Debtor retired from Target in April of 2014and was given the opportunity to continue the life insurance policy with Minnesota Life. Mrs. White-Bowens states that she remember Debtor saying that he did not want to continue the policy, as they had other life insurance in place.

3. Mrs. White-Bowens contact Target by phone and they verified that they policy terminated at the time of separation from the company, unless he continued the policy with Minnesota Life.

4. Mrs. White-Bowens contacted Minnesota Life and they could find no policy on file. They would not provide anything in writing unless a claim was filed.

5. Mrs. White-Bowens and Debtor held an insurance policy with Midland National Life Insurance Company with a death benefit of $125,000.00.

6. Mrs. White-Bowens received $125,269.72 from this policy on November 7, 2014. See Dckt. 56, Exhibit A.

7. With the proceeds received, Mrs. White-Bowens paid Bank of America for Home Equity Line of Credit in the amount of $30,577.90 and First US Community Credit Union in the amount of $16,456.52.

The confirmed First Amended Chapter 13 Plan (Dckt. 32), Debtor has already provided of the above two claims from her regularly monthly income. It does not provide for these creditors to be paid from the insurance proceeds. The court cannot identify whether such payment is consistent with the good faith prosecution of the confirmed plan in this case.

DISCUSSION

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

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

Mrs. White-Bowens' supplemental declaration appears to explain the treatment of the life insurances and the proceeds received by Mrs. White-Bowens. The Trustee's objection being satisfied, it is overruled.

The court does not rule on the propriety of the disbursement of life insurance proceeds by the Debtor or the proper disbursement of the remaining proceeds. The court also does not determine whether this case should properly proceed under Chapter 13.

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 Sandra White-Bowens is substituted as the representative of the interests of Dennis Bowens in this case.
>
> All other relief requested is denied without prejudice.

26. 10-47876-E-13 ANTHONY/PAULA ROBERTSON
CYB-6 Candace Brooks

MOTION TO VALUE COLLATERAL OF ONEWEST BANK, FSB
1-7-15 [88]

Final Ruling: No appearance at the February 10, 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, parties requesting special notice, and Office of the United States Trustee on January 7, 2015. By the court's calculation, 34 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 Onewestbank, FSB ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Anthony and Paula Robertson ("Debtor") to value the secured claim of Onewestbank, FSB ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 9933 Hawkview Way, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $246,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $288,752.00. Creditor's second deed of trust secures a claim with a balance of approximately $118,086.00. 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 Anthony and Paula Robertson ("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 Onewestbank, FSB secured by a second in priority deed of trust recorded against the real property commonly known as 9933 Hawkview Way, Elk Grove, 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 $246,000.00 and is encumbered by senior liens securing claims in the amount of $288,752.00, which exceeds the value of the Property which is subject to Creditor's lien.

27. 14-28676-E-13 GIANNE/RUBY-ROSE APURADO MOTION TO CONFIRM PLAN
JME-1 Julius Engel 12-26-14 [36]

Final Ruling: No appearance at the February 10, 2015 hearing is required.

The case having previously been dismissed on January 23, 2105 (Dckt. 42), **the Motion is dismissed as moot.**

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

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

28. 14-30977-E-13 DPC-1 | **BOUNTHEU THIENPHETH** Pro Se | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 1-14-15 [32]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection and confirmation of the Plan is denied.

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

1. No attempt to reorganize. The Debtor filed this case on November 6, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor's Plan fails to provide for a plan payment amount other than $0.00 and the first payment was due on December 25, 2014. The Debtor has paid $0.00 into the Plan to date. Where the Debtor lists no creditors in the Plan (Dckt 20), no plan payment amount, no

information in the Statement of Financial Affairs other than checking the "None" boxes (Dckt. 18, Pages 19-29), no income in the last six months on the means test (Dckt. 19), but asserts they have $4,200.00 of income as a car painter and $600.00 of income from the operation of business of profession or farm in Schedule I (Dckt. 18, pg. 17), but lists no creditors in Schedules D, E and F (Dckt. 18, Pages 8-15), but indicates they own real property on Schedule A (Dckt. 18, Page 3) but shows Bank of America and wells Fargo as parties on the Master Address List (Dckt. 17(. The Debtor is merely trying to delay proceedings and not repay anyone.

2. Failure to provide tax returns. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his/her 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. 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)(1).

3. Failure to provide pay advices. The Debtor has failed to provide the Trustee with his/her Employer Payment Advices received 60 days prior to filing, under 11 U.S.C. § 521(a)(1)(B)(iv).

4. Failed to appear at First Meeting of Creditors. The Debtor failed to appear at the First Meeting of Creditors held on January 8, 2015. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to March 5, 2015 at 10:30 a.m.

5. Plan fails to provide a dividend to unsecured creditors. The Debtor's Chapter 13 Plan fails to provide a dividend to general unsecured creditors in section 2.15.

DISCUSSION

The Trustee's objections are well-taken. In sum, the court views the Trustee's objection as that the Debtor has filed the instant case as merely a means of avoiding payment on Debtor's debts. The Debtor has failed what the court views is even less than a "bare bones" filing. The Debtor appears to be less than truthful, stating conflicting information such as income and any liens on real property. It is impossible for the court to determine if the proposed plan is confirmable when there is little to no information provided to the court and the Trustee. The Debtor has failed to provide any income information, pay advices, or tax returns. All of these failures are independent grounds for denying confirmation.

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

The 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.

29. 14-30977-E-13 BOUNTHEU THIENPHETH
KK-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CENTRAL MORTGAGE COMPANY
1-15-15 [41]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on January 15, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection and the Chapter 13 case is not confirmed.

Central Mortgage Company ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtor's Plan does not provide for the pre-petition arrearages owed to Creditor.

2. The Debtor's Plan fails to provide that post-petition monthly mortgage payments are to be tendered to Creditor by the Debtor outside the Plan.

DISCUSSION

The Creditor's objections are well-taken. The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $22,499.02 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

As noted by the court in the Trustee's Objection to Plan, the Debtor's bare-bones petition, schedules, and proposed plan provides little to no information as to the Debtor's creditors nor to the treatment of any claims. The failure of the Debtor to provide for any creditor raises questions of candor of the Debtor but also whether this proposed plan was proposed in good faith.

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.

30. 14-30977-E-13 BOUNTHEU THIENPHETH
PD-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
1-12-15 [29]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on January 12, 2015. By the court's calculation, 29 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 and confirmation of the Chapter 13 case is denied.

Deutsche Bank National Trust Company ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtor's Chapter 13 Plan cannot be confirmed because it does not provide for the full value of Creditor's claim. The Plan does not cure Creditor's pre-petition arrears or ongoing monthly post-petition payments. Creditor's claim for pre-petition arrears is in the total amount of $8,169.29.

2. Debtor's Chapter 13 Plan cannot be confirmed because it does not promptly cure Creditor's pre-petition arrears as required under 11 U.S.C.

§ 1322(b)(5). Creditor's secured claim consists of $8,169.29 in pre-petition arrears, however, Debtor's Plan does not provide for the cure of any arrears. Debtor will have to increase their monthly payments through the Chapter 13 Plan to Creditor to approximately $136.15 in order to cure Creditor's pre-petition arrears over a period not to exceed sixty months. As the Debtor's Plan fails to promptly cure Creditor's pre-petition arrears, it cannot be confirmed as proposed.

3. Debtor's Chapter 13 Plan should not be confirmed because it fails to provide for ongoing post-petition payments. The loan relating to Creditor's secured claim matures November 1, 2034, which is after the term of the Debtor's Plan, yet the Plan makes no provision for ongoing post-petition payments. As the Debtor's Plan fails to provide for the maintenance of post-petition payments on Creditor's secured claim, it cannot be confirmed.

DISCUSSION

The Creditor's objections are well-taken.

The creditor first alleges that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the creditor's matured obligation, which is secured by the Debtor's residence.

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

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

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

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

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

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the Debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(1).

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

Furthermore, Creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $8,169.29 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

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

31. 15-20077-E-13 CARL/CAROLYN FORE MOTION TO EXTEND AUTOMATIC STAY
TJW-1 Timothy Walsh 1-22-15 [14]

Tentative Ruling: The Motion to Extend Automatic Stay 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 22, 2015. By the court's calculation,19 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay is denied.

Carl and Carolyn Fore ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case.

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. Debtors hereby move the court for an order to extend the Automatic Stay pursuant to 11 U.S.C. § 362(c)(4)(B). This extension of the Automatic Stay will apply to all creditors.

B. This petition was filed with the Court on January 6, 2015.

C. The debtor has been involved in one previous chapter 13 cases during the past one year: Case #10-43441. This case was dismissed, because the debtors were unable to manage a proposed amended plan, to the satisfaction of the Court.

D. All other aspects of this former case have been performed, including the Motion to Value on the Second deed of Trust. The previous case was filed in good faith. This current case is filed in good faith.

E. Pursuant to code, the debtor is entitled to the granting of this motion.

F. This motion is based upon the contents of this motion and the declaration of the debtor filed concurrent herewith, and other evidence to be presented at the time of the hearing.

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 relief should be granted without explaining how the current case has been filed in good faith. 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."

STATUTORY BASIS

The Debtors have cited to an incorrect Bankruptcy Code section. The Code section cited by the Debtors, 11 U.S.C. § 362(c)(4)(B), is applicable when there are two or more bankruptcy cases pending within the previous year. The Debtors state that there has only been one previous bankruptcy case pending, for which relief which may be requested under 11 U.S.C. § 362(c)(3)(B).

There has been only case no. 10-43441 which was pending and dismissed within the one year prior to the January 1, 2015 commencement of the current case. Case No. 10-43441 was filed on September 1, 2010 and dismissed on June 19, 2014. Case No. 10-43441 was dismissed because of the default in plan payments by the Debtors – which amounts were stated to be $3,880.00 (with $1,000.00 monthly plan payments). Debtors did not oppose the Notice of Default or attempt to modify the Chapter 13 Plan.

The Debtors have a third bankruptcy case which was filed in this district. Case No. 95-22245 was filed by the Debtors on March 16, 1995 and the Debtors receiving their discharge on August 3, 2000. The Debtors modified their Chapter 13 Plan to provide for a 0.00% dividend to creditors holding general unsecured claims.

In substance, the Debtors have constantly been in Chapter 13 during the period March 16, 1995 through the February 10, 2015 hearing on this Motion.

The Debtors assert grounds for relief exist based on "[the prior case] was dismissed, because the debtors were unable to manage a proposed amended plan, to the satisfaction of the court." Motion pg 1:23-24, Dckt. 14. The Civil Minutes for the hearing on the Motion for Debtors' attempt to modify the prior plan states,

> "While the Trustee would normally support a payment increase, according to the Trustee's records, the last statement of income and expenses was filed on September 1, 2010. Trustee argues that the Debtor should not expect the Court to approve a modification when the Debtor is not disclosing their present income and expenses. The Trustee objected to the last proposed modification for this same reason. In the event that the Debtor does not file a current Schedule I and J, the Trustee may seek an Order Authorizing the Examination of each Debtor under Rule 2004."

10-43441; Civil Minutes, Dckt. 83. In substance, the Debtors withheld from the court, creditors, and Chapter 13 Trustee their current financial information. Rather than it merely being that the court "satisfied," the Debtor chose to

withhold the critical, current financial information.

Furthermore, the Debtors merely state that the instant case was filed in "good faith" as the basis for rebutting the presumption of 11 U.S.C. § 362(c). This is facially insufficient.

On the totality of the circumstances, these Debtors who have lived in Chapter 13 for ten years have not rebutted the presumption of bad faith. They could have modified the plan in the prior case, but chose not to. They are now seeking to enter into their second decade of continuous bankruptcy protection.

Therefore, the Motion is denied.

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

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

32. 15-20077-E-13 CARL/CAROLYN FORE **MOTION TO VALUE COLLATERAL OF**
TJW-2 Timothy Walsh **HSBC USA BANK, N.A.**
1-22-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing **on February 10, 2015.**

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

The Motion to Value filed by Carl and Carolyn Fore ("Debtor") to value the secured claim of HSBC Bank USA N.A., HSBC Mortgage("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 103 Maple Ave, Vallejo, Solano County, California ("Property"). Debtor seeks to value the Property at a fair market value of $261,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $322,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $120,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 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 Carl and Carolyn Fore ("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 HSBC Bank USA N.A., HSBC Mortgage secured by a second in priority deed of trust

recorded against the real property commonly known as 103 Maple Ave, Vallejo, Solano County, 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 $261,500.00 and is encumbered by senior liens securing claims in the amount of $322,000.00, which exceeds the value of the Property which is subject to Creditor's lien.

33. 14-25585-E-13 SCOTT OLNEY — MOTION TO CONFIRM PLAN
LBG-4 Lucas Garcia — 12-30-14 [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 Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 30, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

Scott Olney ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 30, 2014. Dckt. 68.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 27, 2015. Dckt. 77. The Trustee objects on the following grounds:

1. The Third Amended Chapter 13 Plan dated same as second amended plan. The Debtor's Second Amended Plan filed on October 9, 2014 (Dckt. 55) was dated by the Debtor on October 8, 2014 and dated by the Debtor's attorney on October 9, 2014. The Debtor's current Third Amended Plan filed on December 30, 2014 (Dckt. 73) is dated on the same dates as the Second Amended Plan.

2. The Debtor has failed to resolve the Trustee's prior objections. The Debtor is causing an unreasonable delay which is prejudicial to creditors. The Debtor has blatantly disregarded the Trustee's objections to the Plan by filing 2 amended Plans that do not resolve or address the Trustee's prior objections. The Trustee is concerned that the Debtor is wasting the Trustee and court's time reviewing Plans that will not be confirmed. The remaining objections remain unresolved from the second amended plan.

3. The Internal Revenue Service filed a proof of claim on August 20, 2014 (Claim No. 3-1), and amended the claim on September 18, 2014. The secured claim is filed in the amount of $9,416.08; and the priority claim is filed in the amount of $10,171.94. The proof of claim provides that the Debtor has not filed tax returns for 2013. The amended Plan filed on October 9, 2014 and December 30, 2014 fail to provide for the secured claim of the Internal Revenue Service in the amount of $9,416.08.

4. Even if the Debtor sought to pay the secured claim filed by the Internal Revenue Service in the amount of $9,416.08, the Plan would then complete in 77 months as opposed to 60 months proposed, this exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Debtor's Plan proposes payments of $435.00 for 1 month; $481.00 for 3 months; and $510.00 for 53 months with a 1% dividend to unsecured creditors. The plan payments total $30,075.00. The Debtor is proposing to pay the Plan: $4,000.00 attorney fees; $8,500.00 at 4% interest for the 2005 Big Dog Motorcycle in Class 2, which totals $9,392.43; $2,860.44 at 18% interest for Contra Costa County property taxes in Class 2, which totals $4,362.48; Internal Revenue Service in Class 5, which totals $10,071.94; if the $9,416.08 for the not provided for secured claim of the Internal Revenue Service is added to the Plan; and the 1% dividend to unsecured creditors, which totals $471.02, a grand total of $37,712.93 is needed to pay claims.

5. It appears that the Plan is not the Debtor's best effort, under 11 U.S.C. § 1325(b). The Debtor is over the median income and proposes plan payments of $435.00 for 7 months; $510.00 for 53 months with 1% dividend to unsecured creditors, which totals $471.02. Based on the Debtor's Amended Schedule I filed on October 9, 2014 and Amended Schedule J filed on July 11, 2014, the Debtor's monthly net income totals $935.21, although the Debtor is proposing plan payments of only $510.00 beginning October 25, 2014. The Debtor amended Schedule I on October 9, 2014 and added $500.00 from his live in girlfriend's contribution. The total amount of income reflects $4,441.30. The Debtor failed to amend Schedule J to show this income of $4,441.30. The Debtor's most recent amended Schedule J was filed on July 11, 2014, which reflects the total expenses of $3,506.09, which leaves monthly net income of $935.21 (Dckt. 56).

6. It appears that the Debtor has not proven they make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor has filed a Declaration of Tracy Baer in support of confirmation (Dckt. 61). However, the Declaration fails to state her ability to contribute $500.00 per month.

7. The Plan fails to provide for the priority claim of the Franchise Tax Board filed on July 30, 2014 in the amount of $203.72. Claim No. 5-1.

DISCUSSION

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

The Trustee's objections are well-taken. This is the Debtor's second attempt at confirming an amended plan which reflect essentially the same terms—and the same issues. The Trustee states, and the court agrees, the that the Debtor appears to be wasting judicial resources by filing an extremely similar plan without correcting the issues that were present in the second amended plan which was denied.

Furthermore, the date of the signatures raises issues over whether the Debtor has actually reviewed the proposed plan.

The proposed Plan once again does not provide for all of the Internal Revenue Service claims. A computation of the proposed plan shows that in order to pay all the claims, it would exceed the permitted 60 months allowed for a plan.

The Debtor has updated Schedule J to reflect the contribution from the live in girlfriend. Dckt. 59. The Declaration fo Tracy Baer states that she contributes $500.00 per month in rent. As the Trustee points out, though, Ms. Baer does not state her ability to continue contribution. This raises concerns as to whether the proposed Plan, which relies on the continued contribution from Ms. Baer, if viable or feasible.

Lastly, the proposed plan once again does not provide for the Franchise Tax Board's Claim.

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

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

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

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

34. 14-31394-E-13 JOSEPH IRVIN
DPC-1 Timothy Walsh
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-14-15 [16]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan provides only $1,000.00 of an Internal Revenue Service priority claim that is in the amount of $23,463.53 (Proof of Claim #2-1).

2. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his/her 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. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

3. The Trustee states that the Debtor admitted at the First Meeting of Creditors held on January 8, 2015 that he had not filed all of his tax returns during the 4-year period preceding the filing of the Petition. The Internal Revenue Service filed a claim date December 10, 2014, Proof of Claim #2-1, reflecting this failure.

DISCUSSION

The Trustee's objections are well-taken. The Debtor's failure to account for the entire claim of $23,463.53 owed to the Internal Revenue Service raises concerns as to the feasibility of the Debtor's Plan. 11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires that the Debtor provide for payment in full of priority claims. 11 U.S.C. § 1322(a)(2) & (4). Here, the Debtor has failed to provide fully for the Internal Revenue Service priority claim.

Next the Trustee objects on the grounds that the Debtor has to provide the Trustee with all necessary documents has mandated by 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). No evidence has been provided that the Debtor has provided this required documentation, although the Debtor did appear at the Meeting of Creditors. Mere attendance, however, does not equate to the Debtor having provided the necessary documentation.

The Trustee's final objection shows that the Debtor has admittedly failed to file his last four tax returns 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 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.