UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 24, 2015 at 3:00 p.m.

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1. 14-31901-E-13 SUSAN YORK
DPC-1 Harry Roth

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK AND/OR OBJECTION TO PROFESSIONAL FEES OF HARRY D. ROTH
1-22-15 [37]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 22, 2015. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 Debtor appears to have filed in the wrong district and the case should be dismissed for improper venue. The Debtor currently is residing in Colorado and the case should have been filed in Colorado based on general venue (28 U.S.C. § 1391). Under Local Bankr. R. 1002-1(d), the Debtor should probably file a motion to allow the current venue as the local rules contemplate.

2. A motion is required for attorney fees. The Debtor failed to choose any box in § 2.06 of the plan although Rights and Responsibilities were filed (Dckt. 9). A separately set Motion should be required to obtain approval of attorney fees, and the Trustee objects to the allowance of any attorney fees under the "no look" procedure allowed under Local Bankr. R. 2016-1(c). The Disclosure of Compensation of Attorney for Debtors (Dckt. 8, pg 35) appears to list in item 7 that the attorney services do not include some services required under Local Bankr. R. 2016-1(c) such as relief from stay actions.

3. It appears that the Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6). The plan payment required is $307.00, however, the Debtor's budget does not support the plan payment. Debtor's Schedule J indicates a monthly net income of $30.86. The Debtor admitted at the First Meeting of Creditors held January 15, 2015 the $500.00 listed on Schedule I, line 8g is anticipated income. Even if the Debtor applied for PERS benefits where the Debtor has not yet received approval of any benefits, there is insufficient evidence to show the Debtor can make the plan payments.

4. The Trustee is uncertain if Debtor's plan is the Debtor's best effort, 11 U.S.C. § 1325(b). Schedule B lists life insurance death benefits in the amount of $177,658.54. The Debtor does not propose to pay any of the proceeds into the plan where the Debtor is under the median income. The plan proposes to pay $307.00 per month for 60 months with no less than a zero percent paid to the unsecured creditors.

5. The Trustee is uncertain that unsecured claims will receive what they would have in the event of a hypothetical Chapter 7, 11 U.S.C. § 1325(a)(4). The Debtor admitted at the First Meeting of Creditors she received a lump sum of $10,000.00 which she used for funeral and other expenses. See Statement of Financial Affairs, Dckt. 8, No. 2, pg. 27. The Debtor refers to $50,000.00 withdrawn from community property on Schedule C (Dckt. 8, pg. 8). While the Debtor asserts that this could be recoverable up to the entire amount, the Debtor then indicates no effort has been made and asserts the value of $50,000.00 is $15,136.31.

DEBTOR'S DECLARATION

On January 29, 2015, Debtor filed a Declaration stating that she lived in the Klamath Dr. Property with her husband from 1994 to 2013 (no specific date provided). Dckt. 48. Debtor states that she was laid off from her job with AAFES at Travis AFB, and accepted a transfer to the airbase in Denver so as to continue in the Federal Employee Retirement System. Debtor has continued to maintain her California driver's license and filed joint income tax returns with her husband using the California address. Debtor states in this Declaration that it was her intention to find a job in California and return here when possible.

The Declaration also provides testimony as to Debtor's belief that the mortgage payments were being made by her late husband while she was in Colorado. The foreclosure came as a shock to her. Her testimony indicates that there were additional factors which came into play with the late husband's failure to make the mortgage payments (having both an Air Force and CalPERS retirement). Further, the circumstances described in the Declaration relating to his death are indicative of other health problems which would negatively impact a person's proper handling of finances.

DISCUSSION

The Trustee's first objection argues that the Debtor's case is in the wrong venue, because she is currently living in Colorado and based on her current residency she does not fall within 28 U.S.C. § 1391. The court addressed this issue in connection with the Chapter 13 Trustee's motion to dismiss the case. The court determined that venue is proper in the Eastern District of California. The court's findings of fact and conclusions of law are stated in the Civil Minutes for the February 18, 2015 hearing on the Chapter 13 Trustee's motion to dismiss this case.

The court overruled this objection to confirmation.

As to the Trustee's second objection, the court is not persuaded as to the fact that the Debtor's attorney is trying to exclude required services, such as relief from stay actions. Based on the language of the Disclosure of the Disclosure of Compensation of Attorney for Debtors (Dckt. 8, pg 35), it appears that the Debtor was attempting to exclude adversary proceedings, and not general relief from stay defense. Reading the sentence in its entirety, the court takes the exclusion to be for adversary proceedings which are not required under the no look provisions of Local Bankr. R. 2016-1(c). The failure to check a box on section 2.06 on the proposed plan is more akin to a scriviner's error which can be corrected in the order confirming, especially in light of the fact the Debtor provides for an amount of the fees to be paid through the plan.

While well taken, the court will not deny confirmation on this attorneys' fee issue. The court is confident that Debtor's counsel will adjust his office's practices and take advantage of the information provided by the Chapter 13 Trustee in connection with this objection.

Grounds for Denying Confirmation

The Trustee's remaining objections, however, are well-taken. A review of Schedule I shows that the Debtor listed this "anticipated" income of $500.00. Given the speculative nature of the income as well as the fact the Debtor has not provided any evidence to support that the $500.00 will actually be received, the feasibility of the Debtor being able to make plan payment is questionable.

As to the life insurance benefits, the Debtor has not provided any explanation of where those funds have gone or why they are not being provided for in the plan. With the Debtor proposing to pay 0% to unsecured creditors and having nearly $180,000.00 in life insurance benefits from the unfortunate passing of Debtor's husband, it appears that the plan may not be the Debtor's best efforts as required under 11 U.S.C. § 1325(b).

Lastly, given the unknowns over certain monies, particularly the $10,000.00 lump sum as well as the insurance proceeds, the court is unable to determine if the unsecured claims would receive what they would under a hypothetical Chapter 7. There is conflicting information listed on the schedules as compared to what the Debtor testified to at the First Meeting of Creditors.

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

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

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

2. 14-31901-E-13 SUSAN YORK
DPC-2 Harry Roth

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
1-22-15 [41]

Tentative Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 22, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The objection to claimed exemptions is overruled.

David Cusick, the Chapter 13 Trustee, filed an Objection to Exemptions on January 22, 2015. Dckt. 41. The Trustee objects on the basis that Debtor is not entitled to the use of the California exemptions because she has not resided in California for at least 2 years prior to filing the petition or the plurality of the 6 months prior to that date. 11 U.S.C. § 522(b)(3)(A).

DEBTOR'S DECLARATION

On January 29, 2015, Debtor filed a Declaration stating that she lived in the Klamath Dr. Property with her husband from 1994 to 2013 (no specific date provided). Dckt. 50. Debtor states that she was laid off from her job with AAFES at Travis AFB, and accepted a transfer to the airbase in Denver so as to continue in the Federal Employee Retirement System. Debtor has continued to maintain her California driver's license and filed joint income tax returns

with her husband using the California address. Debtor states in this Declaration that it was her intention to find a job in California and return here when possible.

The Declaration also provides testimony as to Debtor's belief that the mortgage payments were being made by her late husband while she was in Colorado. The foreclosure came as a shock to her. Her testimony indicates that there were additional factors which came into play with the late husband's failure to make the mortgage payments (having both an Air Force and CalPERS retirement). Further, the circumstances described in the Declaration relating to his death are indicative of other health problems which would negatively impact a person's proper handling of finances.

APPLICABLE LAW

11 U.S.C. § 522 states, in relevant part:

> (b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.
>
> (2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.
>
> (3) Property listed in this paragraph is--
>
> (A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's ***domicile*** has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's ***domicile*** has not been located in a single State for such 730-day period, the place in which the debtor's ***domicile*** was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place. . .

11 U.S.C. § 522 (emphasis added).

DISCUSSION

The crux of the Trustee's objection is whether the Debtor is "domiciled" in California as required by 11 U.S.C. § 522(b)(3)(A) for the Debtor to avail herself to the California exemptions.

As discussed in COLLIER ON BANKRUPTCY,

> "Domicile" as used in section 522 means more than mere residence. Although domicile and residence are often loosely used as synonymous terms, the specified reference to each in the Code indicates an intention to maintain a legal distinction between them. The residence of a debtor may be nothing more than a place of sojourn. While ordinarily used in a sense of fixed and permanent abode, as distinguished from a place of temporary occupation, the term "residence" does not include the intention required for domicile. Domicile means actual residence coupled with a present intention to remain there. It is the place where one intends to return when one is absent and where one's political rights are exercised. Mere physical removal to another jurisdiction without the requisite intent is insufficient to effect a change in domicile.

Collier on Bankruptcy, Sixteenth Edition, ¶ 522.06, Domicile of Debtor.

As addressed by the Ninth Circuit Appellate Panel,

> "Everyone has a domicile and nobody has more than one domicile at a time. RESTATEMENT § 11. Once established, domicile continues until superseded by another domicile. *Id.*, § 19. One may reside in one place and be domiciled in another. *Holyfield*, 490 U.S. at 48.
>
> For adults, a domicile of choice is established by simultaneous physical presence in a place and an intention to remain there. *Id.* at 48; *Kanter*, 265 F.3d at 857; RESTATEMENT § 15."

Donald v. Curry (In re Donald), 328 B.R. 192, 202 (B.A.P. 9th Cir. 2005).

To determine "domicile," "the difficult question is usually whether the individual had the requites subjective intent..." *Id.*, 203. A person's declaration regarding his or her intent is pertinent, but ordinarily will be substantially discounted by the court when inconsistent with the objective facts. *Id.*

The that the Debtor filed her Voluntary Petition on December 8, 2014. On the Petition, Debtor states under penalty of perjury that her street address is 467 Klamath Dr., Vacaville California. Dckt. 1. No other address is given for the Debtor at the time she commenced this bankruptcy case.

On Schedule A, Debtor lists the Klamath Dr. Property, stating that she has a "possessory interest only," valuing it at $1.00. Dckt. 8 at 3. Schedule

A further discloses that the property was "lost to foreclosure" in October 2014. Additionally, the Debtor was unaware of the foreclosure as she was "temporarily staying in Colorado" while her late husband was residing in the home. An unlawful detainer action is pending. *Id.*

Schedule B discloses that Debtor's late husband had withdrawn $50,000.00 from community property bank accounts and may have transferred other personal property for less than fair market value. *Id.* at 7. No creditors are listed on Schedule D as having a lien on the Klamath Dr. Property. *Id.* at 10.

On Schedule G Debtor lists having a one year residential lease with "Camden Belleview Station" in Denver, Colorado. *Id.* at 20. Debtor lists her employer as the Army and Air Force Exchange Service, current at Buckley AFB, Colorado.

The Statement of Financial Affairs discloses that the two law suits involving the Debtor are both in the California Superior Court for the County of Solano. Question 4, *Id.* at 28. The foreclosure of the Klamath Dr. Property is listed as having occurred on October 7, 2014 (the recording date). Question 5, *Id.* at 29.

Reviewing Schedule F discloses that Debtor's creditors are generally institutional creditors, debt servicers, or debt purchasers who have no connection to either the Eastern District of California or the District of Colorado. The creditors with ties to one of the Districts have ties to the Eastern District of California (relating to the residence or medical services).

On January 29, 2015, Debtor filed an Amended Petition which again states under penalty of perjury that her street address is the Klamath Dr. Property. Dckt. 45. However, Debtor now adds a mailing address in Denver, Colorado. *Id.*

The Trustee appears to have convoluted the "residency" of the Debtor with the "domicile" of the Debtor. As the court discussed in the Trustee's Motion to Dismiss and Objection to Confirmation and evidenced by the Debtor's declaration (Dckt. 50), Debtor has the clear intention to return to California and the move to Colorado was mainly to avoid forfeiting her retirement benefits. The petition further supports that California is, in fact, her domicile given that her property and majority of creditors are in California.

Therefore, because the court finds that the Debtor's domicile is California, the Trustee's Objection is overruled.

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

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

3. 14-31901-E-13 SUSAN YORK
HDR-1 Harry Roth

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
1-15-15 [21]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 15, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CitiBank (South Dakota) N.A.("Creditor") against garnished funds of Susan York("Debtor").

A judgment was entered against Debtor in favor of Creditor in the amount of $13,467.77. An abstract of judgment was recorded with Solano County on July 25, 2012, which encumbers the wages.

Pursuant to the Debtor's Schedule B, the subject personal property, "Garnished funds held by sheriff of Solano County. Amount is unknown but is estimated to be not more than $1,000.00" has an approximate value of $1,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $1,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in the amount of $1,000.00 subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of CitiBank (South Dakota) N.A., California Superior Court for Solano County Case No. FCM118630, recorded on July 25, 2012, Document No.201200080357 with the Solano County Recorder, against the personal property commonly known as “Garnished funds held by sheriff of Solano County. Amount is unknown but is estimated to be not more than $1,000.00", is avoided in the amount of $1,000.00 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.

4. 14-31903-E-13 MARK GARCIA
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-28-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 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, Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor's plan payment is insufficient to fund the plan. In Section 6.01, Debtor proposes to pay "adequate protection payments" to Bank of America in the amount of $3,100.00, however, Debtor proposes a plan payment of only $1,500.00 per month. Debtor has failed to list this creditor on Schedule D, instead listing Green Tree Servicing as the only secured creditor. Debtor indicated at his 341, his intent was to pay $1,300.00 per month toward the ongoing mortgage which attempting to work on a loan modification

2. Debtor's plan calls for payment of $3,500.00 in attorney fees and indicate that Debtor paid counsel $1,500.00 prior to filing for a total attorney fees of $5,000.00. This conflicts with both Debtor's Rights and Responsibilities (Dckt. 10, pg. 3) and Debtor's Disclosure of Compensation of Attorney for Debtor (Dckt. 9, pg. 39) which both indicates counsel is to be paid a total of $6,000.00 of which, $1,5000.00 was paid prior and $4,500.00 shall be paid through the plan.

3. The Trustee objects that the Plan does not comply with 11 U.S.C. § 1325(b). It appears that the Debtor has filled the form out inaccurately where it shows the Debtor can afford a plan payment of $9,988.70 to unsecured claims. Dckt. 9, pg. 10, line 45.

On line 8, Debtor deducts $462.00 for housing and utilities when it appears he is entitled to $462.00 based on a household size of 1 in Sacramento County. On Line 9a, Debtor deducts $2,507 when it appears he is entitled to $1,462.00. On Line 9b, Debtor deducts $3,049.92 for average monthly payments of $0.00 to three "Cap One" creditors. On line 33a, Debtor again uses the Capital One accounts for the $3,049.92 deduction for mortgage payments, and then deducts $3,049.92 on line 33d for Green Tree Servicing.

Where the plan calls for the creditor to be paid $3,100.00 per month, Debtor appears to have only enough funds to pay $1,300.00 per month, and Debtor intends to pay only $1,300 to the mortgage in the plan according to testimony at the 341 meeting, claiming the entire payment on the Form 22C02 appears improper. On line 34, Debtor also deducts $2,870.21 for monthly curing of the arrearages, but Debtor does not propose to cure these arrearages.

4. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtor is $1,500.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,500.00 is due on February 25, 2015. The Debtor has paid $0.00 into the plan to date.

DISCUSSION

The Trustee's objections are well-taken. The Debtor's plan does not appear to provide sufficient plan payments to cover both the $1,500.00 a month proposed and the $3,100.00 adequate protection payments to Bank of America, N.A. as proposed in Section 6.03 of the Plan.

A review of Section 2.06 of the plan, Debtor's Rights and Responsibilities (Dckt. 10, pg. 3) and Debtor's Disclosure of Compensation of Attorney for Debtor (Dckt. 9, pg. 39) shows that there is conflicting information as to what amounts the Debtor has paid to Debtor's counsel prior to filing and what amount shall be paid through the plan. This raises questions as to the accuracy of the Debtor's plan and financial information.

As to the Trustee's third objection, the court agrees that the Debtor's have inaccurately filed out Form 22C-2. The Debtor appears to have improperly taken deductions, such as the housing and utilities deductions. Additionally, the court notes that the Debtor lists four cars on Schedule B yet does not calculate any costs on Form 22c-2 and instead claims public transportation expenses. While the court does see that the majority of the vehicles are in need of servicing, the TransAm does not appear to be inoperable. This, along

with the other questionable deductions highlighted by the Trustee, raises concerns as to whether Debtor has complied with 11 U.S.C. § 1325(b).

Lastly, the Debtor's delinquency is grounds alone to deny sufficiency. The court cannot confirm a plan that the Debtor is delinquent under. According to the Trustee's records, the Debtor is $1,500.00 delinquent and has paid $0.00 into the plan.

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

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

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

5. 10-38904-E-13 DONALD/JACQUELINE HEDRICK MOTION TO APPROVE STIPULATION
DBJ-3 Douglas Jacobs 1-26-15 [60]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

Donald and Jacqueline Hedrick, the Debtors, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Beneficial Home Mortgage ("Settlor"). The Movant seeks the court's approval of a stipulation between the parties where the Settlor's loan will be treated as an unsecured debt.

The Settlor and Movant had a controversy over the treatment of the Settlor's second loan on the Movant's residence. Settlor originally listed the

debt on Proof of Claim No. 7 as $48,061.71 as unsecured even though the documents attached included a security interest.

In lieu of filing a Motion to Value the Collateral, the Movant and Settlor were able to stipulate to the treatment of Settlor's claim as general unsecured debt.

Movant states that if the court approves the stipulation, the Movant will file an amended plan to move the Settlor from a Class 4 claim, as currently provided for in the confirmed plan, to unsecured claim.

The Motion states with particularity the following grounds and relief (Fed. R. Bankr. P. 9013) requested in the Motion:

A. On September 25, 2010, Debtor confirmed a Chapter 13 Plan.

B. Debtor has made all payments required under the Plan.

C. A controversy exists between Beneficial Home Mortgage ("Beneficial"), the holder of a claim secured by a second deed of trust on Debtor's residence and Debtor.

D. Beneficial filed a proof of claim in this case for $48,061.71, as an unsecured claim. Attached to the proof of claim were documents which reflected Beneficial holding a security interest for that debt. Proof of Claim No. 7.

E. Beneficial and Debtor have reached a settlement to treat the Beneficial claim as an unsecured claim.

F. Rather than filing a "motion to value the collateral" of Beneficial, Debtor and Beneficial have worked out a stipulation. FN.1.

FN.1 Though not stated in the Motion, this statement that the claim was filed as an unsecured claim would appear to indicate that Debtor provided for the claim as an unsecured claim in the Chapter 13 Plan. The Motion does not state what dispute existed. As discussed below, this appearance of an issue is incorrect, as Debtor provided for in the Plan as a Class 4, fully secured claim, for which the payment extends beyond the term of the Plan

---

G. The Stipulation is filed as Dckt. 36 (which was filed three years prior to the present Motion).

H. The Stipulation "agrees" to treat the Beneficial debt, listed in Class 4 of the plan, now as an unsecured claim. FN.2.

FN.2. The Motion does not state that such provision as a Class 4 claim was in error, typographical or other.

I. Upon receipt of the court's order determining that Beneficial's claim is unsecured, Debtor will then immediately move to amend the Plan consistent with such order. FN.3.

FN.3. It appears that Debtor has not waited for the court to rule on the present Motion, but filed the Modified Plan and motion to confirm on the same date as filing the present Motion.

J. All creditors have been noticed of the Motion.

Motion, Dckt. 60.

A Notice of Hearing on the present Motion has been filed by Debtor. Dckt. 61. Both the Notice of Motion and the Motion were served on all creditors. Cert. of Serv., Dckt. 63.

The Motion requests that the court, pursuant to the Stipulation, determine that Beneficial holds an unsecured claim. It appears that the Motion is seeking an order pursuant to 11 U.S.C. § 506(a) that the secured claim of Beneficial has a value of $0.00 and the balance is to be treated as a general unsecured claim. FN.4.

FN.4. In seeking an order from the court valuing the secured claim of a creditor, many court's and attorneys make the short hand reference to this process as a "motion to value collateral." While the court does value the collateral, the actual motion is to have the court determine the value of the creditor's secured claim. See 11 U.S.C. § 506(a).

DISCUSSION

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

The Motion seeks to have the claim of Beneficial be determined to have a value of $0.00 as a secured claim. The Motion is supported by the declaration of Debtor. In the Declaration Debtor provides testimony as to the legal requirements for the Stipulation and that an order is required from the court for the Stipulation to be effective. No basis is show: (1) for Debtor having the requisite training and expertise to provide the court with such legal requirements and (2) why declaration testimony is being provided to advise the court of legal requirements under the Bankruptcy Code.

A review of the Proof of Claim No. 7 reflects that the statement in the Motion is correct – Beneficial did not designate its claim as secured. Further, a deed of trust is attached, indicating that a lien could exist for that claim. Proof of Claim No. 7 was filed on October 12, 2010.

The Stipulation was filed on January 13, 2012. Dckt. 36. The Stipulation provides:

A. Beneficial agrees to have their lien against Movant treated as an unsecured lien. FN.4.

FN.4. A lien secures a debt or other obligation. Beneficial saying that its lien shall be treated as an unsecured lien is a circular statement. Presumably, Beneficial is agreeing in the Stipulation that its claim shall be treated as an unsecured claim.

B. Beneficial agrees to remove its lien at the end of the Debtor's Chapter 13 case, on the condition that: (1) Debtor successfully completes the Plan and (2) Debtor obtain a discharge.

C. Beneficial agrees to remove the lien at the end of the Movant's chapter 13 Bankruptcy plan, but only if Movant successfully complete their plan and obtain a discharge.

D. Debtor agrees that the debt owed to Beneficial is in the amount of $48,061.71.

E. Debtor agrees to repay Beneficial through the Chapter 13 Plan as an unsecured debt. FN.5.

FN.5. A Chapter 13 Plan term appears to be woven into the Stipulation. Presumably, the reference to an "unsecured debt" is a shorthand for saying that all of Beneficial's claim shall be provided for as a general unsecured claim.

Stipulation, Dckt. 36.

As of the January 36, 2012 filing of the Stipulation, Debtor had confirmed the Original Plan. Order, filed September 25, 2010; Dckt. 18. That Plan lists Beneficial as having a secured claim, with an "unknown" maturity date, which was to be paid by Debtor outside the Plan.

Three months later Debtor filed a Modified Plan which changed the classification of the Beneficial claim to Class 2. First Modified Plan, Dckt. 20. The First Modified Plan listed the claim in the amount of $48,061.71 and provided for a $0.00 dividend. The First Modified Plan provided for a 7.07% dividend for creditors holding general unsecured claims.

The motion to confirm the First Modified Plan was denied. Dckt. 31. in this Chapter 13 case. The motion was denied because Debtor had not obtained an order valuing the secured claim of Beneficial at $0.00 pursuant to 11 U.S.C. § 506(a). Civil Minutes, Dckt. 30. On October 21, 2014, almost three years after denial of the motion to confirm the First Modified Plan, Debtor filed a Second Modified Plan and motion to confirm. Dckts. 45, 41. That motion was denied, again for failure to obtain an order valuing the secured claim pursuant to 11 U.S.C. § 506(a). Civil Minutes, Dckt. 52.

These years of events have led to the present Motion. Though it is devoid of identifying the property which secures the claim of Beneficial and only requests that the lien be determined to be an unsecured lien, pursuant to the Stipulation the court grants the requested relief under 11 U.S.C. § 506(a)

Beneficial and Debtor stipulate that the claim of Beneficial in this case, Proof of Claim No. 7, for which there is a deed of trust recorded against

Debtor's property commonly known as 3144 8th Street, Biggs, California, has a value of $0.00 as a secured claim, and the balance of the claim shall be provided for as a general unsecured claim in the bankruptcy plan in this case. Beneficial'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 Stipulation of the Parties contains additional terms, conditions, and provisions akin to those which are terms of a bankruptcy plan or the subject of proceedings other than a motion to value a secured claim pursuant to 11 U.S.C. § 506(a). Though the additional terms of the Stipulation are not incorporated into an order issued pursuant to 11 U.S.C. § 506(a), the court is cognizant that such representations have been made between the respective parties and that each party has relied thereon. FN.6.

FN.6. The court notes that in reviewing the California Secretary of State's on-line entity search website, it states that there are no entities registered to do business as "Beneficial Home Mortgage" in the state of California, either as a corporation, limited liability company, or limited partnership. http://kepler.sos.ca.gov/. The entity listed on the note, Beneficial California, Inc., is reported by the Secretary of State to have been "merged out." *Id.* A search of the LEXIS NEXIS discloses information that the entity it was merged into was named Beneficial Financial I, Inc. (C2040332).

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

> The Motion to Approve the Stipulation to Value the Secured Claim of Beneficial Home Mortgage filed by Donald and Jacqueline Hedrick, the Chapter 13 Debtors ("Debtor") having been presented to the court, the parties having filed a written stipulation, Dckt. 36, ("Stipulation") resolving stating the agreed valuation of the secured claim, 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 Beneficial Home Mortgage (Proof of Claim No. 7, which lists the name of the creditor as "Beneficial") secured by the real property commonly known as 3144 8th Street, Biggs, California (the "Property"), 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 parties have included in their Stipulation further agreements as to plan terms and other matters beyond the scope of a motion to value secured claim which are not made part of this order, but are express representations and terms upon which the parties have relied in entered into the Stipulation resolving the valuation of the secured claim issue.

6. 14-31706-E-13 GUILLERMO/ESTELLA BENAVIDES
Julius Engle

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK AND/OR OPPOSITION/OBJECTION
1-22-15 [30]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

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

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

7. 14-31907-E-13 EKOW-YARTEL CUDJOE
DPC-1 **Mikalah R. Liviakis**

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-22-15 [28]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

The case having previously been dismissed on February 6, 2015, the Objection is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8. 14-31916-E-13 JMC-2 RUPERT/JOSEFINA ARENAS Joseph Canning MOTION TO CONFIRM PLAN 1-6-15 [23]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

Rupert and Josefina Arenas ("Debtors") filed the instant Motion to Confirm the Amended Plan on January 6, 2015. Dckt. 23.

DE LAGE LANDEN FINANCIAL SERVICES, INC.'S OBJECTION

De Lage Landen Financial Services, Inc. ("De Lage") filed an objection to the instant Motion on February 2, 2015. De Lage objects on the following grounds:

1. De Lage has an allowed secured claim and objects because it has not accepted the plan pursuant to 11 U.S.C. § 1325(a)(5)(A).

2. The value of the Property to be distributed to De Lage under the plan is less than the allowed amount of De Lage's claim. 11 U.S.C. § 1325(a)(5)(b).

3. The Plan is not feasible in light of De Lage's claim herein.

4. The Plan cannot meet the liquidation analysis set forth in 11 U.S.C. § 1325(a)(4). Debtors have significant non-exempt equity in each of the real properties they own which can be used to further fund the Plan and increase the payment to unsecured creditors.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on February 10, 2015.

U.S. BANK NATIONAL ASSOCIATION'S OBJECTIONS

U.S. Bank National Association, as Trustee for Washington Mutual MSC Mortgage Pass-Through Certificates Series 2003-MS2 filed an objection to the instant Motion on February 10, 2015. Dckt. 42.

The Creditor, U.S. Bank N.A., Objects on the following grounds:

1. Debtor's Chapter 13 Plan cannot be confirmed because it does not provide for the full value of Creditor's claim. 11 U.S.C. Section 1325(a)(5)(B)(ii) requires a debtor's Chapter 13 Plan to distribute at least the allowed amount of a creditor's secured claim. See 11 U.S.C. § 1325(a)(5)(B)(ii). Furthermore, the requirement that a debtor provide for the full value of a creditor's secured claim is mandatory for plan confirmation.

The Debtors' Plan cannot be confirmed as proposed because it fails to properly provide for the cure Creditor's pre-petition arrears or the full ongoing monthly post-petition payments. As previously discussed, Creditor's claim for pre-petition is in the total amount of $91,989.49. However, the Debtors' Chapter 13 Plan fails to provide for payment of the pre-petition arrears on Creditor's secured claim. Furthermore, the ongoing post-petition payment amount is $2,925.18. However, the Debtor's Plan lists the ongoing monthly payment as $1,172.29.

2. Debtor's Chapter 13 Plan is not feasible. Debtors' Schedule J indicates that the Debtors have disposable income of $4,675.00 per month, which they are applying in full to the Chapter 13 Plan. However, the Debtors will be required to apply an additional $3,286.05 per month to the Chapter 13 Plan in order to provide for a prompt cure of the pre-petition arrears owed to Creditor in sixty months as well as provide for the full ongoing post-petition payment.

As the monthly plan payment sufficient to cure Creditor's pre-petition arrears and provide for the full ongoing payment exceeds the Debtors' monthly disposable income, the Debtors lack sufficient monthly disposable income with which to fund the Plan. Accordingly, Debtors' Plan does not have a reasonable likelihood of success and cannot be confirmed as proposed.

DISCUSSION

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

The creditors objections are well-taken.

First addressing the De Lage objections, De Lage appears to be misreading 11 U.S.C. § 1325(a)(5). De Lage argues that under § 1325(a)(5), the plan needs to provide for their secured claim in the full value. However, as indicated in the Plan, the Debtor is intending to surrender the property, hence De Lage being in Class 3. As such, 11 U.S.C. § 1325(a)(5))(c) applies to De Lage and the plan could be confirmed based on the classification of its claim. Based on the Debtor's intent to surrender the property securing De Lage's claim, the first three objections are overruled.

However, De Lage's fourth objection is persuasive. It appears that the Debtor has non-exempt real property that could be utilized to pay unsecured creditors in a hypothetical Chapter 7. Particularly, equity seems to exist in all four real properties listed on Debtor's Schedule A. Dckt. 22, pg. 3. Therefore, based on the seemingly substantial equity in these assets, the Debtor does not appear as if they would pass the liquidation analysis.

As to the U.S. Bank's objections, the plan fails to provide for all of the creditor's arrearages which leads to the plan not being feasible.

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 $91,989.49 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.

Finally, the creditor alleges that the Plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), for a number of reasons. First, the first three proposed payments of $4,675.00 are insufficient to pay U.S. Bank's claim, including arrearages. Thus, the plan may not 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.

9. 10-41617-E-13 JOSEPH/YVONNE BLAZEK **CONTINUED MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE AUTOMATIC STAY**
SCC-1 Brandon Johnston **11-25-14 [54]**

COUNTY OF SACRAMENTO VS.

Final Ruling: The motion appearing to duplicate the Continued Motion to Approve Stipulation for Relief from the Automatic Stay (Dckt. 54) set to be heard on February 24, 2015 at 1:30 p.m. pursuant to the order continuing the hearing (Dckt. 64), **this matter is removed from calendar**.

10. 14-21319-E-13 MARK/SARAH ANN HANSEN **MOTION TO VALUE COLLATERAL OF CORNERSTONE COMMUNITY BANK**
BB-5 Bonnie Baker **1-20-15 [71]**

Final Ruling: No appearance at the February 24, 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's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Cornerstone Community Bank ("Creditor") is granted and the secured claim is determined to have a value of $6,855.00.

The Motion filed by Mark Jon Hansen and Sarah Ann Monica Hansen ("Debtors") to value the secured claim of Cornerstone Community Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Ford F250 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,855.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 22, 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,434.57. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim under the Debtor's Chapter 13 Plan is determined to be in the amount of $6,855.00 with the remaining $10,579.57 being treated as a general unsecured claim. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Mark Jon Hansen and Sarah Ann Monica Hansen ("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 Cornerstone Community Bank ("Creditor") secured by an asset described as 2008 Ford F250 ("Vehicle") is determined to be a secured claim in the amount of $6,855.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $6,855.00 and is encumbered by liens securing claims which exceed the value of the asset.

11. 12-26623-E-13 NAVRAJ/INDU JASUJA
PGM-10 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS ATTORNEY(S)
1-14-15 [190]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter G. Macaluso, the Attorney ("Applicant") for Navraj and Indu Jasuja the Chapter 13 Debtor("Client"), makes a second Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 26, 2012 through September 24, 2013. Applicant requests fees in the amount of $2,500.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

ADDITION FEES WHEN NO-LOOK FEES PREVIOUSLY REQUESTED AND ALLOWED

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $2,500.00 in attorneys fees. Dckt. 184. Applicant prepared the order confirming the Plan.

FEES AND COSTS & EXPENSES REQUESTED

The Motion states that Applicant is requesting $2,500.00 in additional fees. The additional fees are requested, and the grounds stated in the Motion are for the following matters:

A. Motion to Sell: 3.40 hours, $680.00 in fees.

Basis for necessary and unanticipated:

> “Counsel suggests this motion was unanticipated, as the Debtor requested permission to sell their business.”

B. Motion to Modify Plan: 4.15 hours, $830.00 in fees.

Basis for necessary and unanticipated:

> “Counsel suggests this motion was unanticipated, as a plan modification was necessary after motion to sell was denied and to provide for secured creditor, not previously provided for.”

C. Motion to Modify Plan: 5.80 hours, $1,160.00 in fees.

Basis for necessary and unanticipated:

> “Counsel suggests this motion to modify plan was unanticipated, as the Trustee filed a Motion to Dismiss case.”

D. Trustee’s Motion to Dismiss: 2.85 hours, $570.00 in fees.

Basis for necessary and unanticipated:

> “Counsel suggests this motion was unanticipated, as the Trustee filed a Motion to Dismiss and Convert Case from Chapter 13 to Chapter 7.”

E. Trustee’s Objection to Exemptions: 2.10 hours, $420.00 in fees.

Basis for necessary and unanticipated:

> “Counsel suggests this work was unanticipated, as the Trustee filed an Objection to Debtors’ Claim of Exemptions.”

F. Motion to Modify: 3.45 hours, $690.00 in fees.

Basis for necessary and unanticipated:

> "Counsel suggests this motion was unanticipated, as a plan modification was necessary after Trustee's Objection to Debtors' Claim of Exemptions was sustained."

G. Trustee's Motion for Production of Documents: 3.25 hours, $650.00 in fees.

Basis for necessary and unanticipated:

> "Counsel suggests this motion was unanticipated, as the Trustee filed a Motion for Examination and Production of Documents."

H. Motion to Modify: 6.45 hours, $1,290.00 in fees

Basis for necessary and unanticipated:

> "Counsel suggests this motion was unanticipated, as a plan modification was necessary after previous plan was denied and Trustee's examination was completed."

Motion, Dckt. 190.

The Motion proceeds to state that there were 31.45 hours of post-petition "actual, reasonable, necessary, and unanticipated" legal services provided by Applicant.

Though the Motion alleges that there were 31.45 hours of such work, additional fees of only $2,500.00 are requested (12.50 hours). No reason is given for such a substantial reduction.

Applicant provides a task billing analysis and supporting evidence for the services provided. Dckt. 194.

Applicant has also provided his declaration in support of the Motion. Dckt. 192. He testifies that he agreed to accept $3,500.00 in fees for this case. Further, that an additional $2,500.00 represents the "necessary and unanticipated" fees above the $3,500.00 set fee. Order Confirming Plan allowing $3,500.00 in fees, L.B.R. 2016-1(c); Dckt. 45. Counsel does not provide testimony as to why $2,500.00 represents such additional fees, or what constitutes the 12.50 hours of work, from the 31.45 hours of work which is alleged in the Motion to be the "actual, necessary, and unanticipated" legal services.

The court's review of the file indicate that this case, and attorney, have been troubled by Debtors who have sought not to comply with the Bankruptcy Code, but to have their own *sui generis* bankruptcy laws. Additionally, some of the confusion, and work for counsel, have been cause by his zeal in attempting to address the desires of clients he presumably believed were acting in good faith.

First Motion to Sell.

The first motion to sell was denied because it named the wrong property that the Debtors were trying to sell. See Civil Minutes, Dckt. 59, which state,

> "Debtors admit in their reply that they do not seek to sell the real property, but the business operated at the real property. The motion, however, it quite clear as to the relief Debtors seek. As the sale is not in the ordinary course of business, all creditors are entitled to notice. Fed. R. Bankr. P. 2002(a)(2). In this case, creditors have notice that the Debtor seeks to sell the real property. They do not have notice that the Debtor instead seeks to sell the business located the real property.
>
> This Motion is fatally defective as it does not identify the property to be sold. The Notice of Hearing is fatally defective because it misidentifies the property being sold. If the Debtors wish to sell their business and the personal property of the business then they may file a motion to sell those personal property assets, with that motion actually identifying what is to be sold (and not merely generically describing the assets as business and inventory."

The court is hard pressed to understand how a motion which misstates the property to be sold is "reasonable" or "necessary" and represents a basis for fees.

Second Motion to Sell.

The second motion to approve a sale suffered the same fate, denial due to substantive defects in the motion and the lack of credible testimony from the Debtors. See Civil Minutes, Dckt. 75, which state,

> "The undisclosed assets, the multiple amended Schedules, and the failure to disclose payment of property taxes on the eve of bankruptcy significantly impair the Debtors' credibility. The Debtors state under penalty of perjury in the Schedules that the business only has a liquidation value of $12,000.00 and no goodwill value. For the current sale, the value has risen sufficient to sell it for $20,000.00, with the buyer paying $3,000.00 for goodwill. Not coincidently, the additional values are just enough to pay what the Debtors identify as sale expenses so that they can claim a new exemption in the remaining net proceeds of just less than $12,000.00 (the amount of the exemption claimed in the business, including the tools of the trade exemption).
>
> The testimony and Purchase Agreement provided to the court is devoid on any information as to the purported $5,735.00 costs of sale and the $3,000.00 in purported taxes. Fortunately, from the Debtors' perspective, this works out to be exactly the number of expenses and taxes so that the remaining net proceeds can be within the re-reamended exemption amounts

previously stated by the Debtors. The court does not find the Debtors' testimony as to the expenses and taxes to be credible.

The court will not approve a sale which purports to authorize the payment of unidentified expenses and taxes. Further, the court will not approve a sale that may purport to authorize the Debtors to claim the proceeds as exempt. The Debtors have filed a blizzard of amended schedules, including amended exemptions. Further, the amended schedules have disclosed cash accounts for which no plausible explanation has been provided for the failure to disclose when the case was filed or earlier in these proceedings.

Finally, the court has no idea what assets are being sold. The motion sees to sell generically described assets consisting of "business inventory, equipment and goodwill located in the property commonly known as 7467-69 Village Parkway, Dublin, California." Dckt. 62. The court has no idea if the inventory consists of two boxes of salt, three chickens, and a bottle of pepper, or a freezer full of food to prepare a banquet for 200 persons. Additionally, the equipment could consist of a one burner stove, hot plate, to pans, and a spatula, or may be a 14 burner Wolf stove, six oven, three walk in freezers, three stainless steel work tables with built in sinks and disposals.

The Business Purchase Agreement states that a list of the equipment being sold is attached, but that disclosure has been omitted from the Exhibit A filed with the court. Dckt. 65. Further, though not disclosed in the Motion, the Business Purchase Agreement allocates $2,000.00 for the Debtors and estate not to compete within 5 miles of the Dublin, California location of the business being sold. The court cannot issue an order which effectively states that the Debtors may sell the "Stuff" used in the business. That is what has been requested by the Debtors. The court also will not approve a sale and blindly parrot purported expenses merely because the Debtors say that such expenses exist."

Again, the court is hard pressed to understand how a motion which misstates the property to be sold is "reasonable" or "necessary" and represents a basis for fees.

First Motion to Modify.

The attempt to modify the plan in the Summer of 2013 failed, the motion denied because of Debtor's failure to accurately state information in the motion and supporting declaration. Civil Minutes, Dckt. 96. Again, the court is hard pressed to understand how a motion which misstates the property to be sold is "reasonable" or "necessary" and represents a basis for fees.

First Trustee Motion to Dismiss.

The court denied the motion, without prejudice, because the Debtors had filed a new modified plan and motion to confirm. Civil Minutes, Dckt. 111.

Second Trustee Motion to Dismiss or Convert.

The Trustee filed a second motion to dismiss or convert asserting several grounds, including: (1) Debtors' sale of property without court authorization; (2) diversion of sales proceeds to pay creditors outside of plan; and (3) Debtor's admitting to non-exempt equity in assets which was not being provided for creditors. Though the court denied the Motion without prejudice, it did so noting that conversion could well be the "escape" that Debtors were seeking from their misdeeds in the Chapter 13 case. Civil Minutes, Dckt. 137, stating,

> "The Debtors plead with the court to be punished by allowing them to perform the plan they now propose. For Debtors who have breached their fiduciary duty to the estate, transferred assets without court authorization, and intentionally violated the Bankruptcy Code so that they could get cash from a secret sale and then try to keep it by amending their Schedules, being able to be protected in a Chapter 13 case may well be part of their larger strategy to abuse the Bankruptcy Code, Estate, and creditors. Further, requesting to be punished in the Chapter 13 case not have their case dismissed may merely be a Trojan Horse to mislead the court into dismissing the case. With the case dismissed, the Debtors could then further divert, transfer, or hide the sales proceeds, and then file a new case, gambling that they will get a different judge and Chapter 13 trustee."

Second Motion to Modify.

The second attempt to confirm a modified plan was denied, again because the pleadings prepared by counsel and filed for Debtors did not provide credible testimony to support confirmation. Civil Minutes, Dckt. 125. Again, the court is hard pressed to understand how a motion which misstates the property to be sold is "reasonable" or "necessary" and represents a basis for fees.

Trustee's Objection to Exemptions.

The Debtor's "opposition" consisted of only Applicant's arguments. This opposition was understood by the court to be,

> "In opposition the Motion the Debtors offer no evidence, no testimony, no statements under penalty of perjury. Rather, they merely push their attorney out in front of them to argue, 'Give the Debtors $15,025.00 in cash they got from selling property of the estate without court authorization, ignore their breach of their fiduciary duty, ignore that they had the proposes sale denied by the court but they chose to breach their fiduciary duty knowing that the court had denied the sale, and "punish" the Debtors by making they pay the grand total of $4,975.00 of their ill gotten gain to creditors.'
> ...

> The Debtor clearly have the ability to place the $20,000.00 they improperly took and now claim as exempt back into the estate. But this appears to be the farthest thing from their mind, trying to nickel and dime the way out of their breach of fiduciary duty. This appear to be part of what may be a larger strategy to abuse the Bankruptcy Code, Estate, and creditors, hide assets, and steal as much as they can from the estate.
>
> The court finds that Debtors have acted in bad faith and therefore, sustains the Trustee's objection. The Debtors' exemptions claimed in the Restaurant business and assets is denied."

Civil Minutes, Dckt. 142. Again, the court is hard pressed to understand how a motion which misstates the property to be sold is "reasonable" or "necessary" and represents a basis for fees.

Third Motion to Modify.

The Third Motion to Modify was denied by the court. Again, the court found that the testimony prepared and presented by Applicant was not credible. The court found, "Rather, they [Debtor's testimony] demonstrate a continued contempt for the federal court process and the obligations of the Debtors to act in good faith and make truthful statements." Civil Minutes, Dckt. 158. The court concluded,

> "Having been caught with their "hands in the cookie jar," the Debtors and their counsel had an opportunity to address the breach of their fiduciary duties and diversion of estate assets. They chose not to do so, but instead to further their scheme of deceit. Additionally, the Debtors, as fiduciaries of the estate have done nothing to recover the assets, or value of the assets, which were sold by them to third parties."

Id. Again, the court is hard pressed to understand how a motion which misstates the property to be sold is "reasonable" or "necessary" and represents a basis for fees.

Fourth Motion to Modify.

Finally, with the Fourth Motion to Modify the court granted the motion and confirmed a modified plan. The Debtors ultimately proposed a plan to reasonable pay back the estate for the $20,000.00 of unauthorized sales proceeds which had been diverted. Civil Minutes, Dckt. 184.

Trustee's Examination.

The Trustee's examination of the Debtors appears to relate to the assets sold without authorization, the diverted proceeds, and undisclosed assets.

Costs and Expenses

Applicant does not seeks additional allowance and recovery of costs and expenses.

FEES AND COSTS & EXPENSES ALLOWED

Fees

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

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

Applicant seeks to be paid a single sum of $2,500.00 for its fees incurred for the Client. While many of the legal services provided were not reasonable or necessary, in getting the modified plan confirmed pursuant to the fourth motion and addressing the discovery undertaken by the Trustee, $2,500.00 in fees is reasonable. The court disallows all other fees stated in the motion as additional fees, which are in excess of the $2,500.00 amount.

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

Fees	$2,500.00
Costs and Expenses	$ 00.00.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtor

Fees in the amount of $ 2,500.00
Expenses in the amount of $ 00.00,

The fees and costs are allowed as additional, necessary, unanticipated fees, in addition to the $3,500.00 in fees allowed as the set fee for counsel in this case.

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

12. 14-31924-E-13 DPC-1 CATHERINE COLLINS W. Scott de Bie

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 1-22-15 [21]

Final Ruling: No appearance at the February 24 , 2014 hearing is required.

The Chapter 13 Trustee having filed a “Notice of Withdrawal” for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Notice of Withdrawal” to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee'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 Chapter 13 Trustee, the Chapter 13 Trustee 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 Objection being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation is dismissed without prejudice.

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 2, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

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

TRUSTEE'S OBJECTIONS

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

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

The Trustee objects on the following grounds:

1. Debtors filed Amended Schedules I and J on December 22, 2014 (Dckt. 116) which support the proposed plan payment of $1,640.66. The

adjustments to expenses are normal reductions in expense and appear largely due to Debtor's change in circumstances where Debtor Glenn Lowery, Jr. is deceased.

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

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

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

DEBTORS' REPLY

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

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

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

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

JANUARY 13, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 24, 2015. The court further ordered that on or before January 22, 2015, the Debtor shall file and serve the Supplemental Exhibit consisting of the draft proposed Second Modified Chapter 13 Plan which states all of the proposed amendments and Notice of Continued Hearing advising parties in interest of the hearing date and following deadlines. The court additionally ordered that on

or before January 30, 2015, objections to the proposed draft Second Modified Plan shall be filed and served, and on or before February 6, 2015, Reply, if any, to oppositions shall be filed.

DEBTOR'S SECOND MODIFIED PLAN

The Debtor filed a proposed second modified plan on January 20, 2015. Dckt. 130.

TRUSTEE'S RESPONSE

The Trustee filed a response to the proposed second modified plan on January 28, 2015. Dckt. 132. The Trustee responds as follows:

1. A slight plan delinquency exists, but the Trustee believe the Debtor can make the payment required under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent $146.04 under the terms of the proposed second modified plan. According to the proposed modified plan, payments of $28,472.20 have become due. The Debtor has paid a total of $28,326.16 to the Trustee with the last payment posted on January 27, 2015 in the amount of $1,494.62.

2. The plan appears to call for 41 months of payments starting January 2015, where the case was filed April 2013, so that 20 months have elapsed. The Trustee would not oppose the plan being amended in the order confirming to call for an extra payment in the 60th month.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on February 18, 2015. Dckt. 136. The Debtor provides information concerning the Trustee's objections as to the separate structure on Debtor's property and the trailer. Based on the information in the declaration, namely the fact that some unrelated person is now located on the property paying rent which is now reflected in the supplemental Schedule I and the trailer having no liquidation value as it is completely deteriorated and unusable, the Trustee's concerns appear to be addressed.

DISCUSSION

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

The Trustee's supplemental response shows that the proposed second modified plan is confirmable. While the Debtor is slightly delinquent, it appears that is due to the fact the January payment was made under the confirmed plan rather than the proposed plan. The Debtor can make this payment in the following month to make up for the delinquency.

As to the issue concerning the length of the plan, the Trustee suggests, and the court agrees, that to remedy the "61st month," the order confirming can have the Debtor make an additional payment in month 60 to cover the full commitment of the plan.

Therefore, after the Debtor cures the $146.04 delinquency in the next plan payment and the order confirming has an additional payment to be made in

month 60, 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 January 20, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan providing an additional payment in month 60 and curing the $146.04 default, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

14. 13-20028-E-13 GREGORY/ELISA WYATT MOTION TO MODIFY PLAN
EJS-22 Eric Schwab 1-15-15 [218]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Greg and Elisa Wyatt ("Debtors") filed the instant Motion to Confirm the Modified Plan on January 15, 2015. Dckt. 218.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 4, 2015. Dckt. 224. The Trustee states that he is uncertain of the proposed plan payments. Section 6.01 of the proposed plan states:

> 6.01 Debtors shall make plan payments to the trustee in the following manner:
>
> - Pay a total of $109,693.00 from February, 2013 through December 2014.
>
> - Pay $4,419.00 from January, 2015 through January, 2018.

While the Trustee believes the Debtor intends for this to be a monthly payment from January 2015 through and including January 2018, where the other plan provision was a lump sum payment, the Trustee objects to verify the $4,419.00 is a monthly payment.

The Trustee states that he would have no objection if this was corrected in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. Section 6.01 of the proposed plan is ambiguous as to the actually monthly payments for January 2015 through January 2018. However, reviewing the original plan as well as the instant Motion, it appears that the Debtors meant to state that the "4,419.00" is a monthly payment and not a lump sum payment for the last three years of the plan. The original plan payment was approximately $5,000.00 per month. Based on the change of income and expenses as outlined in the updated budget, it appears that the reduction to $4,419.00 a month was the intention of the Debtors.

As the Trustee points out, this is more akin to a scriviner's error which can be corrected in the order confirming the plan.

With the Trustee's objection being able to be rectified in the order and no other objections pending, 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 January 15, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan explicitly stating that the monthly payments for January 2015 through and including January 2018 is $4,419.00, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. 14-32233-E-13 NF-1 | **GARY HARTLEY AND PAMELA SCHWENINGER HARTLEY**
Nikki Farris | **MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A.**
1-13-15 [14]

Final Ruling: No appearance at the February 24, 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 13, 2015. By the court's calculation, 40 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 JPMorgan Chase Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Gary and Pamela Hartley ("Debtor") to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5196 Bennett Road, Paradise, California ("Property"). Debtor seeks to value the Property at a fair market value of $176,000.00 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 $195,371.48. Creditor's second deed of trust secures a claim with a balance of approximately $28,662.00. 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 Gary and Pamela Hartley ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 5196 Bennett Road, Paradise, 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 $176,000.00 and is encumbered by senior liens securing claims in the amount of $195,371.48, which exceeds the value of the Property which is subject to Creditor's lien.

16. 11-33540-E-13 PGM-5 GREGORY/ROBIN SMITH Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
1-22-15 [134]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January, 22 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Gregory G. Smith and Robing R. Smith the Debtors in Possession ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period July 7, 2011 through September 11, 2012. Applicant requests fees in the amount of $2,620.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including filing multiple motions, appearing at court proceedings, and general case administration. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

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

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 132. Applicant prepared the order confirming the Plan.

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 8.05 hours in this category. Applicant assisted Client with reviewing the multiple objections to the Plan, meeting with the clients to discuss those plans, reviewing evidentiary case law, and emails regarding plan negotiations.

Adversary Proceedings: Applicant spent 1.2 hours in this category. Applicant appearing at hearing for Objection to Confirmation of Plan, the continued hearing for Objection to Confirmation of Plan, and hearing on Motion to Confirm.

Significant Motions and Other Contested Matters: Applicant spent 3.85 hours in this category. Applicant prepared multiple responses to objections to plan and filed response to opposition to Motion to Confirm Plan.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso, Debtor's counsel	13.10	$200.00	$2,620.00
Total Fees For Period of Application			$2,620.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

A review of the services rendered and in light of the Trustee's non-opposition, the court finds that the additional services provided were substantial and unanticipated and justify the additional fees, in addition to the no-look fee elected by applicant.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. First and Final Fees in the amount of $2,620.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $2,620.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Peter Macaluso, Professional Employed by Debtor in Possession

Fees in the amount of $2,620.00

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

17. 14-24643-E-13 LAQUETA MARTIN
SJD-1 Susan Dodds

OBJECTION TO CLAIM OF EMPLOYMENT DEVELOPMENT DEPARTMENT, CLAIM NUMBER 13
2-4-15 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 20 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 13 of Employment Development Department is overruled without prejudice.

LaQueta Martin, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Employment Development Department("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,837.78. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is September 3, 2014. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

However, the Debtor has not provided sufficient notice as required by Fed. R. Bankr. P. 3007 and Local Bankr. R. 3007-1. For an Objections to Proof of Claims, Local Bankr. R. 3007-1 has two different notice periods which a moving party can utilize: (1) 44 days notice and (2) 30 days notice. Debtor only provided 20 days notice, which is insufficient.

It appears that the Debtor believed that she was moving under Local Bankr. R. 9014-1(f)(1), based on the notice stating that opposition was required to be filed 14 days prior to hearing. However, even if Local Bankr. R. 9014-1(f)(1) was the correct rule, the Debtor failed to give sufficient notice under that because Local Bankr. R. 9014-1(f)(1) requires 21 days notice.

Therefore, because the Debtor has failed to provide sufficient notice, the Objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Employment Development Department, Creditor filed in this case by LaQueta Martin, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 13 of Employment Development Department is overruled without prejudice.

18. 14-28243-E-13 ISIDRO GRAGEDA **MOTION TO CONFIRM PLAN**
TOG-2 Thomas Gillis **1-6-15 [32]**

Final Ruling: No appearance at the February 24, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

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

Isidro Grageda ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 6, 2015. Dckt. 32.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 10, 2015. Dckt. 42. The Trustee objects on the following grounds:

First, that there is insufficient information to determine the value of the Debtor's residential real property located at 576 Carroll Ave., Sacramento, California, and the Debtor's rental property located at 2990 Stonecreek Dr., Sacramento, California.

Second, that the Trustee is unable to determine the feasibility of the Plan, because the Debtor failed to file a Business/Rental Income Budget detailing the business and rental income and expenses.

Lastly, that the Debtor's Plan is not the Debtor's best efforts under 11 U.S.C. § 1325(b), because the Debtor is proposing to pay $200.00 per month for 60 months with a 40% dividend to unsecured creditors even though he is above median income.

DEBTOR'S RESPONSE

Debtor responded to the Chapter 13 Trustee's opposition on February 18, 2015. Dckt. 45. The Debtor stated that the Debtor does not oppose the Trustee's opposition, and will file an Amended Plan to address the Trustee's issues.

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's failure to provide all necessary information to the Trustee as well as the concerns over the proposed dividend to unsecured creditors raises serious questions over the feasibility and viability of the plan.

Furthermore, the Debtor concedes to the Trustee's objections.

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.

19. 12-40945-E-13 MANSOUR/MARTHA GANJI MOTION TO MODIFY PLAN
PGM-5 Peter Macaluso 1-8-15 [97]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2015. By the court's calculation, 47 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 January 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. 13-24745-E-13 LORI SWAIN
PGM-2 Peter Macaluso

MOTION TO MODIFY PLAN
1-15-15 [74]

Final Ruling: No appearance at the February 24, 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 January 15, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

21. 13-29251-E-13 DAMION BOATMAN **MOTION TO MODIFY PLAN**
SS-5 Scott Shumaker **1-9-15 [94]**

Final Ruling: No appearance at the February 24, 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 January 9, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 January 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. 14-28452-E-13 SATINDERJIT BAINS — **MOTION TO APPROVE LOAN MODIFICATION**
MAC-2 Marc Carpenter — **2-2-15 [31]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 2, 2015. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Satinerjit Bains ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,608.33 a month to $1,316.18 a month. The modification will have a new principal balance of $145,873.50. The interest rate will be 4.375%. The new monthly payment will include any amounts owed for insurance and escrow. Any prior delinquent loan amounts will be added to the balance of the Debtor's loan pursuant to the Partial Claim Amount set forth in the terms of the Debtor's loan modification agreement.

$48,113.50 has been designated in the agreement as the partial claim amount. In order for the Debtor's modified loan to be more affordable, the FHA has agreed to advance funds. In return, the Debtor has agreed to sign a zero-interest subordinate promissory note and subordinate mortgage which will be paid to the Secretary of Housing and Urban Development on the earliest of: 1) January 1, 2045; (2) the modified first mortgage is paid in full; (3) partial claim mortgage and modified first mortgage has been accelerated; (4) partial claim mortgage and/or first mortgage is no longer insured by HUD; or (5) Debtor no longer occupies the principal residence.

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.

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 Satinerjit Bains 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 Satinerjit Bains ("Debtor") to amend the terms of the loan with Bank of America, N.A., and obtaining the additional financing necessary for the modification, which is secured by the real property commonly known as 2825 Eureka Drive, Yuba City, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt.34.

23. 14-30855-E-13 RICHARD CHAIREZ **MOTION TO CONFIRM PLAN**
HWW-3 Hank Walth **1-13-15 [33]**

Final Ruling: No appearance at the February 24, 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 January 13, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 28, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

24. 14-30959-E-13 KENNETH/FRANCINE YATES
DPC-1 Robert Fong
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
12-16-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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 Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). At the 341 Meeting held on December 11,

2014, Debtors indicated that they would be moving to Washington State on December 12, 2014, the next day. Debtor Kenneth Yates has secured employment in Washington, but as a loss of income and Francine Yates has not yet found employment.

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

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

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

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

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

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

JANUARY 13, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 24, 2015 to allow the parties to file supplemental pleadings. Dckt. 25. The court ordered Debtors to file and serve opposition on or before February 11, 2015. The court further ordered the Trustee to file and serve a reply, if any, on or before February 18, 2015.

DEBTORS' RESPONSE

The Debtors filed a response on February 6, 2015. Dckt. 26. The Debtors respond as follows:

1. The Debtors are current on their plan payments. Because Debtors relocated from the Sacramento area to the State of Washington after the Chapter 13 case was filed, Debtors' income was changed. Debtors have since filed Supplemental Schedules I and J to show the actual income of Debtor Kenneth Yates and the projected income of Francine Yates, who recently secured employment. Francine Yates started work January 26, 2015 at $36.50 per hour, 40 hours per week, as a Case Manager for Providence Hospice.

2. The treatment of the claim of Nissan Motor Acceptance in Class 2 is appropriate, as the variation proposed by Debtors is permitted, even by the plain language of the form plan. The Treatment proposed by Debtors, direct payment on the subject vehicle, is not prohibited by the Bankruptcy Code, and therefore permitted by the standard plan. In preparing the plan as initially proposed, Debtors intended for the vehicle to be paid by Debtors directly as a Class 4 claim. Further, creditors are not jeopardized, as the plan proposes a dividend of 100% to general unsecured creditors.

3. While the Trustee asserts that the Debtors did not list the 2011 Yamaha YZF-R6, Debtors assert that it does not belong to them but instead belongs to their son, Donavan Bush, who is 25 and not a dependant. Insurance on the vehicle is paid through Debtors' policy to help their son with lower insurance costs. Debtors' son reimburses Debtors for his portion of the insurance payment. Though title to the vehicle is under but Francine Yates and Donavan Bush, Debtors have not asserted any actual ownership of the vehicle. The vehicle was purchased approximately April 2013 in both names because Debtors' son did not have good credit. No down payment was required. The regular payment of $176.00 per month is made by Debtors' son, who gives the funds to Francine Yates, who makes the payment directly to the creditor. All maintenance costs are made by Debtors' son who is the exclusive user of the vehicle.

TRUSTEE'S REPLY

The Trustee filed a reply to the Debtors' response on February 17, 2015. Dckt. 34. The Trustee replies as follows:

1. A review of the Supplemental Schedule J reveals that the only change in the Debtors' schedule of expenses is their rent. Debtors' rent decreased from $2,975.00 to $2,195 in their recent budget, nothing else changes. Debtors' utilities did not change at all and their grocery bill did not adjust to the change in environment. The Trustee is not certain whether the new schedule is accurate.

A review of Debtor Kenneth Yates' paystub does reveal that accurate information is disclosed on Schedule I as to his income and ability to make the proposed payment of $1,950.00. The Trustee is unable to verify Francine's income as no pay stubs were available with the response.

2. The Debtors do not seem to understand that variations are to be made in the Additional Provisions section of the plan. Instead, the Debtors used the additional provisions section to deal with attorney fees but not the claim of Nissan Motor Acceptance Corp. What the Debtors have done by omitting

any additional provisions is state that this claim is a Class 4 claim, where Class 4 provides “Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan.”

The claim filed on November 11, 2014 by the creditor, clearly shows that the contract expires while the Debtors are in the term of the Chapter 13 plan. Payments on this loan of $804.10 will end December 2017, three years into the plan. Presumably the Debtor does not want to provide for this claim in the plan as it would result in creditors being paid sooner with the plan payment increased by $804.10 which would start going to unsecured creditors after the car was paid.

3. As to the 2011 Yamaha YZF-R6, the Debtors indicate that the vehicle is their son’s which Francine Yates co-signed and co-owns with her son. From the Debtors’ response, not only is the asset not listed on Schedule B, but Debtor Francine Yates has a secured obligation with Synchrony Bank that is not listed on Schedule D. Debtors indicate that their son pays the Debtors $176.00 per month to pay the lender and Debtor Francine Yates pays the lender directly. Debtors also indicate that their son pays them for his share of the insurance costs. None of this income is reported on Schedule I.

DISCUSSION

The Trustee’s objections remain well-taken. The response filed by the Debtor has just provided more information on the lack of feasibility of the plan. The Debtors have admitted that Debtor Francine Yates’ name is on the vehicle, yet did not list the vehicle on Schedule B. Further, Debtors admitted that Debtor Francine Yates is a co-signor of a secured lien on the vehicle which she has failed to list on Schedule D. Merely because the son uses the vehicle does not mean that the Debtors are exonerated from their obligations to the secured creditor or disclosing their interest in the property. Furthermore, as the Trustee notes, the Debtors have failed to list the additional “income” coming in from Debtors’ son in the reimbursement of the insurance and vehicle. This may result in an under reporting of the Debtors’ disposable income which raises questions concerning the feasibility of the plan.

Furthermore, the Debtors misstate the Additional Provisions section of the form order and improperly list Nissan Motor Acceptance Corp. A review of the Proof of Claim filed by the creditor shows, in fact, the contract ends during the life of the plan. Listing the creditor as a Class 4 claim is improper. The Debtors attempt to rely on the purpose of the Additional Provisions section to state that they can manipulate the form plan. However, this is improper and the creditor’s treatment in Class 4 is improper.

As to the issue concerning the income and expenses, Schedule I appears to properly adjust for Debtor Kenneth Yate’s income. Since Debtor Francine Yates has just started her job, there are no pay stubs to confirm the listed income on Schedule I. The Trustee’s concerns as to the expenses on Schedule J not changing is not as concerning as the Trustee appears to make it. While it may be unusual, Debtors may have adjusted their lifestyle to stay within their prior budget or the cost of living, such as utilities, in Washington state are comparable to Sacramento.

However, due to the failure to list the vehicle on Schedule B, failure to list the secured claim held by Synchrony Bank in which Debtor Francine Yates is a consigner on in Schedule D, and the failure to properly classify Nissan Motor Acceptance Corp., the plan is not confirmable.

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

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

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

25. 10-44161-E-13 STEPHEN BARNETT — MOTION TO MODIFY PLAN
CFH-4 Curt Hennecke — 1-9-15 [93]

Final Ruling: No appearance at the February 24, 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 January 9, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 January 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 10-44161-E-13 STEPHEN BARNETT **CONTINUED MOTION TO DISMISS CASE**
DPC-3 Curt Hennecke **12-8-14 [86]**

Final Ruling: No appearance at the February 24, 2014 hearing is required.

The Chapter 13 Trustee having filed a “Withdrawal of Motion” for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

27. 10-46562-E-13 LISA WILLIAMS
JTN-3 Jasmin Nguyen

MOTION TO ALLOW FURTHER ADMINISTRATION OF THE CASE 1-21-15 [46]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Allow Further Administration of the Case 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 Allow Further Administration of the Case is granted.

Jasmin Nguyen, attorney for the Debtor, filed the instant Motion to Allow Further Administration of the Case under Fed. R. Bankr. P. 1016 on January 21, 2015. Dckt. 46.

The Debtor passed away on April 30, 2012. On February 24, 2015, the court granted the Motion to Substitute Debtor's non-filing spouse, Anthony Williams.

Debtor's counsel states that there appears to be nine months remaining in the plan.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on February 10, 2015.

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*.

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.

Upon review of the Motion and the status of the case, given the minimum plan payments left in order for the plan to be complete and the court has granted the Motion to Substitute, the court finds that it is in the best interest of the parties and is possible.

Therefore, the court grants the Motion.

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 Allow Further Administration of the Case filed by Debtor's counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted.

28. 10-46562-E-13 LISA WILLIAMS **MOTION TO SUBSTITUTE PARTY**
JTN-4 Jasmin Nguyen **1-26-15 [55]**

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

Successor in interest, Anthony Williams, non-filing spouse of Debtor seeks an order approving the motion to substitute the Mr. Williams for the deceased Debtor, Lisa Williams. 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 October 5, 2010. On January 10, 2011, the Debtor's Chapter 13 Plan was confirmed. On April 30, 2012, the debtor passed away. The Successor in interest asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Successor in interest 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 26, 2015. Dckt. No 55. Successor in interest is the spouse of the deceased party and is the successor's heir and lawful representative. Successor in interest states that he will continue to prosecute this case in a timely and reasonable manner.

On February 10, 2015, David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion. Dckt 59.

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, Mr. Williams 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 55. 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 Successor in interest, Anthony Williams, 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 Anthony Williams is substituted as the representative of Lisa Williams in this Chapter 13 case.

29. 10-46562-E-13 LISA WILLIAMS
JTN-5 Jasmin Nguyen

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
1-26-15 [51]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Exemption from Financial Management Course 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 for Exemption from Financial Management Course is granted.

Debtor's attorney, Jasmin Nguyen, moves the court for an order waiving the requirement of a Debtor Education Certificate in granting a discharge to Lisa Williams, now deceased.

Section 109(h) states,

> (h) (1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

Pursuant to 11 U.S.C. § 1328(g),

> (g) (1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

Therefore, in order to receive a discharge in a chapter 7 or chapter 13 case, an individual debtor must complete a personal financial management course after the petition is filed unless certain exceptions apply. 9 COLLIER ON BANKRUPTCY ¶ 1007.03[vi] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) The exceptions excuse debtors who are incapacitated, disabled, or on active military duty in a combat zone. *Id.*

Here, Debtor passed on April 30, 2012, before being able to complete the Debtor Education course.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on February 10, 2015.

Therefore, the court waives the requirement as to Lisa Williams to complete the Debtor Education Course.

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 Exemption from Financial Management Course filed by Debtor's counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and debtor Lisa Williams is exempted from completing the Financial Management Course as required by 11 U.S.C. § 1328.

30. 14-22763-E-13 PHILIP BROWN **MOTION TO CONFIRM PLAN**
JMC-4 Joseph Canning **12-23-14 [80]**

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 23, 2014. By the court's calculation, 63 days' notice was provided. 42 days' notice is required.

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

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

Philip Brown ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 23, 2014. Dckt. 80.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 10, 2015. Dckt. 96. The Trustee objection is based on the fact that the total funds paid into the case does not match plan. Debtors amended plan (Dckt. 82) sets forth in Section 6 payments of $2,528.05 for month 1, $185.00 for months 2-9, $485.00 for months 10-33, the $785.00 for months 34-36. According to these provisions, the total paid into the plan to date would be $4,493.06.

Debtor has paid a total of $8,382.09 into the plan to date. The Trustee does not oppose a provision in the Order Confirming Plan correcting the total paid in to date.

DEBTOR'S RESPONSE

The Debtor filed a response on February 17, 2015. Dckt. 99. The Debtor states that if the plan is confirmed, the Debtor will submit a proposed Order Confirming Plan correcting the total paid to date.

DISCUSSION

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

While the Trustee's objection as to the amount of funds paid into the case does not match the plan is correct, as the Trustee and the Debtor state, this is a mere scrivener's error which could be corrected in the order confirming. Outside of that error which could be corrected in the order confirming, the plan appears to be feasible, viable, and consistent with the requirements of the Bankruptcy Code.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 23, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan correcting the amount of funds paid into the case, 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.

31. 14-22763-E-13 PHILIP BROWN **MOTION TO APPROVE LOAN**
JMC-5 Joseph Canning **MODIFICATION**
1-15-15 [89]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on January 15, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Philip Brown ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. as Trustee for American Home Mortgage Investment trust 2004-1, Mortgage-Backed Notes, Series 2004-1 ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,433.00 a month to $2,215.54 a month. FN.1. The modification will not change the interest rate or principle amount. The arrearage, if any, in the mortgage payments will be cured.

FN.1. The Debtor lists Ocwen Loan Servicing, LLC as the “Creditor.” However, a review of the loan modification attached as Exhibit A and the Power of Attorney attached as Exhibit B show that the actual creditor is Wells Fargo Bank, N.A. as Trustee for American Home Mortgage Investment trust 2004-1, Mortgage-Backed Notes, Series 2004-1 and not Ocwen Loan Servicing, LLC. The Debtor appears to be implicitly arguing that Ocwen Loan Servicing, LLC, under the Power of Attorney, is acting as the agent of the true creditor and has the authority to enter into these modification agreements.

The court also notes that the Loan Modification Agreement attached as Dckt. 92, Exhibit A has the agreement and then a signature page that is signed and notarized by Rebecca Sipowicz stating that she is signing this as the representative of Ocwen Loan Servicing, LLC as attorney-in-fact of Creditor. Given the fact that Ocwen Loan Servicing signed as the “attorney-in-fact” for the Creditor, the Ocwen appears to have the authority to enter into the loan modification agreement.

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.

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 Philip Brown 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 Philip Brown ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A. as Trustee for American Home Mortgage Investment trust 2004-1, Mortgage-Backed Notes, Series 2004-1, which is secured by the real property commonly known as 418 Larkin Drive, Benicia, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 92.

32. 14-31363-E-13 AARON/MARIA MAREADY
GDC-2 Guy David Chism

MOTION TO CONFIRM PLAN
12-24-14 [32]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

33. 10-40964-E-13 EDDIE/MELISSA BERENGUE
DPC-4 Richard Chan

CONTINUED MOTION TO DISMISS CASE FOR FAILURE TO MAKE PLAN PAYMENTS
12-8-14 [145]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

The Motion to Dismiss is dismissed without prejudice and the case shall proceed in this court.

The Trustee seeks dismissal of the case on the basis that the Debtor is $1,280.00 delinquent in plan payments, which represents multiple months of the $328.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTORS' OPPOSITION

On January 20, 2015, the Debtors filed an *ex parte* application shortening time to respond to Trustee's Motion to Dismiss. Dckt. 156.

The Debtors filed an opposition to the instant Motion on January 20, 2015. Dckt. 158. The opposition states:

1. In late December, Debtors only vehicle went into the shop again and it was determined that the cost to fix the vehicle exceeded what the Debtors were able to pay., It was also clear that Debtors were not going to be able to get current on their plan payments prior to the dismissal date without a motion to modify plan.

2. Debtors discussed the need to surrender the current vehicle and the procedure for applying for permission to purchase a new vehicle. Debtors began working with Paul Blancos, but were uncomfortable with the sales practice of said dealer, and determined that at this time, they could not feasibly make a car payment. Debtors made arrangements to borrow parent's vehicle until sometime after the completion of this plan.

3. Debtors have filed a motion modifying their Chapter 13 plan in an effort to get current and complete the final eight months of the plan.

JANUARY 21, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 24, 2015.

DISCUSSION

The Chapter 13 Trustee having filed a “Withdrawal of Motion” for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case**.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

34. 10-40964-E-13 EDDIE/MELISSA BERENGUE MOTION TO MODIFY PLAN
RAC-9 Richard Chan 1-19-15 [150]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2015. By the court's calculation, 36 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 January 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 14-27264-E-13 DENNIS JACOPETTI **MOTION TO CONFIRM PLAN**
RJ-3 Richard Jare **1-6-15 [66]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 January 6, 2015. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

Dennis Jacopetti ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 6, 2015. Dckt. 66.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 28, 2015. Dckt. 79. The Trustee objects on the following grounds:

1. The Debtor lists the Internal Revenue Service in Class 5 in the amount of $4,111.00. This debt was not originally scheduled in the prior plans and the Internal Revenue Service has not filed a claim and the bar dates from them to file a timely claim elapsed on January 12, 2015.

2. The Debtor's plan fails to propose a dividend to Select Portfolio's Class 1 mortgage arrears in the amount of $253,188.00 (listed as disputed in the Plan) as the Additional Provisions indicate "Debtor wants to

start process of a HAMP application for modification of this loan." The Debtor proposes adequate protection payments to Select Portfolio in the amount of $2,500.00 and the actual mortgage payment is $3,966.00.

Bank of New York Mellon, fka Bank of New York, filed an Objection to Confirmation on September 22, 2014 (Dckt. 37) indicating that the Debtor owes $256,420.69 in pre-petition mortgage arrears to this creditor, which includes 53 missed mortgage payments. The Creditor's objection states that the Debtor's actual mortgage payment is $5,423.42 per month. The Debtor was denied a loan modification by Select Portfolio on or about July 8, 2014. Dckt. 39. The Debtor is trying to obtain a loan modification on real property commonly known as 8006 Anastasia Way, El Dorado Hills, California, which is valued on Schedule A at $800,000.00 with a claim against the property at $848,537.00

Only one adequate protection payment has been made to Select Portfolio in the amount of $3,000.00. The Debtor has paid a total of $5,600.00 into the Plan to date. The Debtor is four payments post-petition delinquent to this creditor. The Debtor lists no dependents on Schedule J and appears to be living in the real property alone. The Debtor clearly cannot afford this mortgage payment and is not entitled to a loan modification based on the denial letter from the creditor.

3. The Debtor filed Schedules I and J on August 5, 2014 which reflected net business income on Schedule I of $7,000.00 and line 13 indicated the following: "Business has surged at the new location, From Projected $27,500 Gross Receipts, after Expenses the passthrough is $7,000.00 and quickly improving. A month 15 step-up is possible if necessary. $7,500.00 balance in the LLC bank account buffers the filing fee payment. Quickly improving business makes the month 15 Step-up to $6,800.00 feasible."

The Debtor filed Amended Schedules I and J on January 6, 2015 and listed the exact same net income of $7,000.00 and the exact same explanation listed on line 13, indicating a month 15 step up of $6,800.00, however the Amended Plan does not list a step up payment of $6,800.00.

The Debtor has failed to provide specific evidence – where Amended Schedule I shows the Debtor as employed at the business since 2008 (Dckt. 71) and the Debtor has three failed bankruptcies– how the business is quickly improving.

4. This case is Debtor's fourth bankruptcy filing within the past 2 years. The Debtor has not given sufficient evidence to show they will have the ability to make the plan payments and complete the plan where they have had three recent prior bankruptcies which were unsuccessful, 11 U.S.C. § 1325(a)(6). The first bankruptcy case (No. 12-26206-13) was filed on March 30, 2012 and dismissed on April 10, 2012 for failure to timely file documents. The second bankruptcy case (No. 13-34493-7) was filed on November 13, 2013 and dismissed on January 17, 2014 for failure to appear at the First Meeting of Creditors. The third bankruptcy case (No. 14-23007-11) was filed on March 25, 2014 and dismissed on April 14, 2014 for failure to timely file documents.

5. The Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor lists the value of his business, Pacific Adjustment, LLC, 100% as $1.00. Dckt. 25, Schedule B, pg. 5. The Debtor has failed to provide the Trustee with any documentation or evidence of the value.

The Debtor is proposing a 0% dividend to unsecured creditors. The Debtor's 2013 tax return provided to the Trustee shows that the Debtor's gross receipts from the business are $290,505.00; the costs of goods sold are $110,000.00; and the total business expenses are $90,345.00; so the tentative profit absent labor costs appears $89,010.00.

6. The Debtor has failed to provide a business income and expenses attachment. The Debtor list his business income in the amount of $7,000.00 on Schedule I, however the Debtor has failed to provide a business income and expense attachment showing the gross income and expenses of the business.

BANK OF NEW YORK MELLON'S OPPOSITION

Bank of New York Mellon, formerly known as Bank of New York, as Trustee on behalf of the registered holders of Alternative Loan Trust 2006-OA7, Mortgage Pass-Through Certificates Series 2006-OA7) ("Creditor") opposes confirmation of the Plan on the basis that:

1. Debtor's Chapter 13 Plan understates the pre-petition arrears. While Debtor's Plan proposes to cure arrears in the amount of $95,000.00, the arrears are significantly higher and total $256,420.69. Debtor will have to increase the payment through the Plan to Creditor to approximately $4,271.68 per month for a 60 month term to cure this.

2. Debtor's Schedule J indicates that Debtor has a monthly disposable income of $3,500.00. However, this figure seems inaccurate, since Debtor fails to include the regular mortgage payment in Schedule J as part of his ongoing monthly expenses. Debtor's current monthly mortgage payment is $5,423.42. With the mortgage payment included in Debtor's monthly expenses, Debtor has no surplus income to fund the Chapter 13 Plan. This is even without the increased arrears payments sought by Creditor. After reviewing Debtor's Schedules I and J, there is insufficient income to fund the plan. Therefore, the Plan is not feasible and should not be confirmed.

3. Debtor has filed previous bankruptcy cases. On November 13, 2013, Debtor filed a Chapter 7 case that was dismissed on January 17, 2014. Debtor filed another case under Chapter 11 on March 25, 2014, which was dismissed on the same date. The instant case was filed July 15, 2014, making it Debtor's third case in one year. The case is deemed to be presumptively filed not in good faith. Debtor has not rebutted the presumption, but proposed an infeasible Plan.

4. Creditor also objects that Debtor has not removed the loan modification provisions attached to the proposed Plan, despite Creditor's denial of Debtor's request for a loan modification.

DISCUSSION

This is the Debtor's second attempt at trying to get a plan confirmed. As last time, the Trustee and the Creditor files nearly identical objections, all of which have not been cured in the Debtor's amended plan.

The Debtor has failed to provide the Trustee with the most basic of required documents and information – Business Income and Expense Information. Debtor does not have a set wage or historic income and projected expense

information upon which confirmation is sought. Rather, Debtor projects, without support, that there is "surging income." The Debtor has not provided evidence that the plan is feasible. 11 U.S.C. § 1325(a)(6).

In addition, Debtor seeks to proceed with a plan that relies upon substantially increased payments in the future, not amortizing curing of the Bank of New York Mellon, as Trustee, claim through a series of (relatively) equal payments 11 U.S.C. § 1325(a)(5)(iii) or through a reasonable sale of the property securing the claim. Rather, Debtor's plan makes discounted current monthly payments on this claim (based on Debtor's computation of the monthly payment amount) for fifteen months, and then steps them up. Debtor fails to make any payment on curing the arrearage amount he states in the plan until month 15 of the Plan. In substance, the Plan provides for the Bank of New York Mellon, as Trustee, claim to be paid at a discount, without any cure of the arrearage, until more than a year after the case was filed. Not only does this fail to properly provide for the claim, it further indicates that the Plan is not being presented in a good faith attempt to comply with the Bankruptcy Code (Debtor not having the consent of this Creditor to the proposed treatment). 11 U.S.C. § 1325(a)(3).

As to the Creditor's objections, Creditor holds a deed of trust secured by the Debtor's residence. Since the last Motion to Confirm, Creditor has filed a Proof of Claim No. 16 on November 25, 2014. The list of arrearages at the time the case was filed is $253,188.39. While this does not match up to the amount claimed in Creditor's objection (which appears to be a duplicate of the one filed at the first Motion (Dckt. 37)), the Plan does not provide for even the lesser arrearage amount listed on the Proof of Claim.

Additionally, the Creditor alerts the court that the Debtor filed a previous Chapter 7 petition on November 13, 2013, which was dismissed on January 17, 2014. Then, the Debtor filed a Chapter 11 on March 25, 2014, which was dismissed the same day. The Debtor's recent bankruptcy cases have implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

As to the Creditor's objections concerning the mortgage payments not being listed on Schedule J, the absence of the payments being listed on Schedule J does not prevent the plan from being confirmed. Because the Debtor is paying the mortgage through the plan and Schedule J is meant to calculate the disposable income that is available for plan payments, the absence of the mortgage payment is merely the Debtor calculating his total disposable income that can be applied to the plan. While the Debtor could have listed the mortgage on Schedule J then added it back when discussing that the mortgage, the way the Debtor compiled his Schedule J is, technically, proper. Therefore, the court overrules Creditor's second objection.

Lastly, the Creditor's fourth objection is not an objection that would prevent confirmation but instead appears to be an inadvertent oversight.

Therefore, upon review of the docket, the proposed plan, the Debtor's motion and declaration, the Trustee's objections, and the Creditor's objections, the court sustains the Trustee's objection.

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

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

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

36. 14-31766-E-13 ROBERTO RAMIREZ **OBJECTION TO CONFIRMATION OF**
DPC-1 Pro Se **PLAN BY DAVID P CUSICK**
1-22-15 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), all creditors, parties requesting special notice, and Office of the United States Trustee on January 22, 2015 By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear and be examined at the First Meeting of Creditors held on January 15, 2015. The meeting was continued to February 12, 2015 at 10:30 a.m.

2. The Chapter 13 documents are incomplete and the Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6):

a. Section 1.03 of the plan is blank. The Debtor failed to list the duration of payments

b. Debtor lists Nationstar Mortgage in Class 1 of the plan. Class 1 is incomplete as it fails to list the arrearage dividend and the interest rate on arrears is listed as 2.00. Schedule J lists an ongoing mortgage payment in the amount of $1,065.00. The treatment to and for Bayview Mortgage is not clear.

c. Section 2.15 of the plan is blank. No dividend to the unsecured creditors was listed.

d. Section 6 of the plan states additional provisions are appended to the plan. However, nothing was filed with the plan.

e. Debtor failed to list the following bankruptcy cases on his petition: Case Nos. 11-48165, 14-25966, and 14-23403.

f. Debtor has failed to use the new Official B 6I (Schedule I) and Official Form B 6J (Schedule J) which became the standard forms on December 1, 2013.

g. The Statement of Financial Affairs does not appear to be complete. Debtor provided limited employment information in question 1.

3. The plan does not pay unsecured creditors what they would receive in the even of a Chapter 7, 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals $5,500.00 and the Debtor failed to propose a dividend to unsecured creditors. The Debtor is married and his spouse is not included in the bankruptcy. The Debtor has failed to file a Spousal Waiver for use of the California State Exemptions under the California Code of Civil Procedure § 703.140.

The Trustee's objections are well-taken.

The basis for the Trustee's first 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).

As to the Trustee's remaining objections, it appears that the Debtor has merely filed a bare-bones plan to comply with the requirements of the Bankruptcy Code. A review of the plan shows that the Debtor has failed to provide necessary information, such as plan duration and dividend to unsecured creditors. The court cannot confirm a plan that is only partially filled out. Furthermore, the Debtors petition also appears to be missing necessary information, such as the previous bankrutpcies and employment, or using the updated forms.

Lastly, the plan does not appear to satisfy 11 U.S.C. § 1325(a)(4) since there is equity in the estate but the Debtor's plan does not propose any dividend to unsecured creditors.

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

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

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

37. 14-32167-E-13 SHELDON MCRAY
DPC-1 Marty Courson

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
1-28-15 [31]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 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 overrule the Objection.

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

1. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of BSI Financial Services. If the motion to value is not granted, Debtor's plan does not have sufficient monies to play the claim in full and therefore should be denied confirmation.

2. The Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured

claim of Wells Fargo Dealer Services. If the motion to value is not granted, Debtor's plan does not have sufficient monies to play the claim in full and therefore should be denied confirmation.

3. The Trustee is unable to determine whether the Debtor can make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Trustee is unable to determine feasibility of the plan, Debtor's Schedule I, shows at least a portion of Debtor's income is from a contribution from a "future spouse" however Debtor has failed to file provide Declarations by the contributors to prove these contributions are likely to occur and that the party has the means to contribute for the full term of the plan. Debtor's indicated at his 341 Meeting held on January 22, 2015, that $1,566.32 per month is being contributed by a girlfriend who does not live with the Debtor, but is willing to contribute to assist the Debtor financially.

4. The Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying $3,003.00 per month with no guaranteed dividend to unsecured claims (unsecured claims are to receive no less than 0.00%), Debtor reports on line 13 of Schedule I (Dckt. 16, pg. 8) that he is currently still receiving $1,200.00 per month rents on his rental property. This information was verified at the 341 Meeting. Debtor also confirmed that he is not paying his mortgage on that property. It appears that the Debtor has an additional $1,200.00 per month to contribute toward the plan until the property is either short sold, foreclosed upon, or until the tenants vacate the property. The Trustee requests evidence of such occurrence taking place before the Debtor is allowed to cease contributing the additional $1,200.00 per month toward the plan.

5. The Debtor's plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying $3,003.00 per month with no guaranteed dividend to unsecured claims. The Debtor exempts on Schedule B, No. 18 (Dckt. 16, pg. 2) speculative 2014 tax refund of $6,500.00. In 2014 the Debtor received a federal refund of $6,858.00 for a refund of his 2013 federal tax return filing. It appears that the Debtor receiving high refunds is a trend. The Trustee requests that Debtor be required to turn over future tax refunds to be paid into the plan as an additional payment to unsecured creditors beginning with his 2015 return and continuing throughout the plan. The Trustee also request that the Debtor provide timely filed copies of the tax returns each year.

6. Debtor's plan calls for payment of $2,954.00 in attorney fees, but fails to propose a monthly dividend to administrative fees in Section 2.07. The Trustee is not opposed to the Debtor's suggestion that this being resolved in the order confirming, if approved by the court.

7. In section 1.02, Debtor includes that in additional to his regular plan payments, additional payments will be paid by "funds from Debtor's significant other." This appears to be an error in the plan. According to testimony at the 341 Meeting, Debtor's counsel intended to include the contributions on Schedule J. The Trustee is not opposed to the Debtor's suggestion that this provision be stricken in the order confirming, if approved by the court.

8. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtor is $3,003.00 delinquent in plan payments to the

Trustee to date and the next scheduled payment of $3,003.00 is due on February 25, 2015. The Debtor has paid $0.00 into the plan to date.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the Trustee's Objection on February 10, 2015. Dckt. 35. The Debtor opposes as follows:

1. Trustee's Objection #1: If the Motion to Value is denied, the plan would not be confirmable.

2. Trustee's Objection #2: If the Motion to Value is denied, the plan would not be confirmable.

3. Trustee's Objection #3, 4, and 5: As to the Debtor's residential property and rental property, the plan is two fold: (1) play catch-up on mortgage arrears on the residential property while ultimately avoiding the second mortgage lien and (2) surrendering the rental property. It is unclear how long it will take the secured lender to recover the rental property upon surrender but, currently, the Debtor has been receiving rent from his tenant in the amount of $1,200.00 per month. Debtor states that this will likely end soon as the tenants have given notice that they will be moving shortly.

   As to the Debtor's large federal tax refund in 2013 of about $6,858.00, the Debtor argues that it is unlikely to be repeated in 2014 because:

   (A) Debtor had significant mortgage arrears in 2014 and the concomitant mortgage interest service on his residential property dropped from $25,571.00 in 2013 to $4,157.31 in 2014. This is a net reduction in mortgage interest deduction of $21,414.00 for 2014.

   (B) Debtor missed 5 mortgage payments on the rental property during 2014 for a total installment arrears of $6,120.60 for 2014 while having regular rent receipts of $1,200.00 per month ($14,400.00 total rent receipts in 2014). During 2013, Debtor was current on his debt service on the rental property while having lower rental income ($8,726.00 total rent receipts in 2013). The increase on income and the decrease in expenses will increase Debtor's net taxes related to the rental property for 2014. The Debtor states that he is attempting to show that the 2013 tax refund is not a predictor for 2014.

   As to the Debtor's significant other, Linda Griffin, Debtor states that Ms. Griffin is gainfully employed, has her own family, has a child in college and owns and lives in her own residence separate from that of Debtor. Dckt. 37. There is no legal or other requirement to do so, but Ms. Griffin wants to help Debtor succeed in saving his home by contributing to Debtor's available resources in order to meet his monthly plan payment obligations. Dckt. 37. In summation, the Debtor is stating that either by the rental income, tax refund, or the

contribution from Ms. Griffin or any combination of, Debtor will be able to afford plan payments.

Debtor requests that the court overrule the Trustee's objections relative to the contribution of rental income or future tax refunds (beginning in 2015) as that "income" will be insufficient to meet Debtor's anticipated plan deficits under his own resources once properly accounted for.

4. Trustee's Objection #6 - Attorney Fee Dividend. The Trustee is amenable that a monthly dividend to pay the $2,954.00 in unpaid attorney's fees that should have been set forth in Section 2.07 be ordered via an order confirming plan. Debtor has no objection to this treatment and affirmatively requests same.

5. Trustee's Objection #7 - Additional Payments. The Trustee is amenable that language be stricken from the plan that suggests that "funds from Debtor's significant other" would be contributed to the plan in excess of the regular plan payment. Debtor has no objection to this treatment and affirmatively requests same.

6. Trustee's Objection #8 - Payments. The initial payment in this case was made through the TFS Bill Pay system. However, there was confusion over the scheduling of the payment (which was scheduled and subtracted from Debtor's account prior to the January 25, 2105 payment date) and the date such payment was, apparently, booked by the Trustee. As a result the payment was late. Debtor will endeavor to correct that scheduling issue in the future.

DISCUSSION

As to the Trustee's first and second objection, the Debtor's Motions to Value were both granted at the hearing on February 24, 2015 and, thus, these objections are overruled.

As to the Trustee's remaining objections, it appears to the court that they can either be remedied through the Order Confirming or the Debtor has sufficiently explained the discrepancies.

The Debtor has provided the Declaration of Ms. Griffin as evidence that she is willing to contribute to ensure that the Debtor is able to make all necessary plan payments.

With respect to the rental income, the plan can be modified to provide that the $1,200.00 a month in rent (or such other amount as is actually received) will be paid into the plan so long as it is being paid by a tenant so long as Debtor continues to own the property.

The Debtor has sufficiently explained that the previous year tax refunds are not an indicator of what this year's tax refund will be, given the substantial decrease in the mortgage interest reduction and the difference in income and expenses as to the rental property. However, the Trustee's request

to have the tax refund, once received, to be turned over for the benefit of the plan and unsecured creditors is proper, given the potential of a modest to large size return.

The Order Confirming can include language concerning the treatment and disbursement of attorney's fees. Further, the Order Confirming can strike the language in the plan concerning Ms. Griffin's contribution being placed in the plan in excess of the regular plan payment.

Lastly, the Debtor has sufficiently explained the processing error in the initial plan payment. The court is satisfied that the Debtor has taken the necessary steps to ensure that future plan payments will be made timely.

Seeing that all the Trustee's objections have been properly addressed, the Trustee's objections are overruled.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 17, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan including the provision in Section 2.07 as to the treatment of the remaining attorney fees and striking the language concerning Ms. Griffin's contribution being contributed in excess of the normal plan payments, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

38. 14-32167-E-13 SHELDON MCRAY
MKC-1 Marty Courson

MOTION TO VALUE COLLATERAL OF BSI FINANCIAL SERVICES, INC.
1-27-15 [19]

Final Ruling: No appearance at the February 24, 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 27, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of BSI Financial Services, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Sheldon Wyatt McRay ("Debtor") to value the secured claim of BSI Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 325 Woodson Way, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $357,867.00 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 $110,802.99. Creditor's second deed of trust secures a claim with a balance of approximately $428,246.00. 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 Sheldon Wyatt McRay ("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 BSI Financial Services, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 325 Woodson Way, Vallejo, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $357,867.00 and is encumbered by senior liens securing claims in the amount of $428,246.73, which exceeds the value of the Property which is subject to Creditor's lien.

39. 14-32167-E-13 SHELDON MCRAY
MKC-2 Marty Courson

MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES
1-27-15 [25]

Final Ruling: No appearance at the February 24, 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's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 27, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Wells Fargo Dealer Services, a dba of Wells Fargo Bank, N.A. ("Creditor") is granted and the secured claim is determined to have a value of $13,232.00.

The Motion filed by Sheldon Wyatt McRay ("Debtors") to value the secured claim of Wells Fargo Dealer Services, a dba of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Buick La Crosse CXL ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $13,232.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in April, 17 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,617.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim under the Debtor's Chapter 13 Plan is determined to be in the amount of $13,232.00 with the remaining $8,385.00 being treated as a general unsecured claim. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Sheldon Wyatt McRay (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Dealer Services, a dba of Wells Fargo Bank, N.A. (“Creditor”) secured by an asset described as 2011 Buick LaCrosse CXL (“Vehicle”) is determined to be a secured claim in the amount of $13,232.00, and the balance of the claim ($8,385.00) is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $13,232.00 and is encumbered by liens securing claims which exceed the value of the asset.

40. 11-36470-E-13 WASIF/IRUM ASGHAR
WW-3 Mark Wolff

MOTION FOR COMPENSATION FOR R. TODD LUOMA, DEBTORS ATTORNEY(S)
1-20-15 [105]

Tentative Ruling: The Motion for Compensation 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 NOT Notice Provided. Movant has failed to provide a Proof of Service. 14 days' notice is required.

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

The Motion for Compensation is set for a final hearing at 3:00 p.m. on xxxx, 2015. Supplemental Opposition, if any, shall be filed and served on or before xxxx, 2015, and Supplemental Reply, if any, shall be filed and served on or before xxxx, 2015.

R. Todd Luoma, special tax counsel for Debtors Wasif and Irum Asghar, ("Movant") filed an Application for Allowance of Fees and Costs. The Movant is seeking for an allowance of attorney's fees and costs for the period of August 25, 2014 through and including January 14, 2015.

However, the Movant has failed to provide a Proof of Service for the court to determine if all necessary parties were served and whether propre notice was given.

Furthermore, the Movant's Notice fails to abide by the requirements of Local Bankr. R. 9014-1(d)(3). Specifically, Local Bankr. R. 9014-1(d)(3) states:

> (3) Contents of Notice. The notice of hearing shall advise potential respondents whether and when written opposition must be filed, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition. If written opposition is required, the notice of hearing shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition.

Movant's Notice merely states:

> NOTICE IS HEREBY GIVEN that on February 24, 2015 in Department 33, R. Todd Luoma will move this Court for an Order granting the allowance of fees and costs sought as set forth in the Application and accompanying supporting documents served and filed with the court upon the grounds set forth in the previously filed Application and accompanying documents.

Dckt. 111.

The Movant does not state whether written opposition is necessary, what the deadline for such opposition would be, and other required information. Furthermore, the Movant misidentifies the "Department" as "33" (the courtroom number) rather than "Department E."

Notice of Opposition by Debtors

The Debtors and Movant have filed supplemental objections and responses, some of what information should have been included with the original motion.

The court believes that the defects in notice can properly be waived and the motion set for a final hearing pursuant to Local Bankruptcy Rule 9014-1(f)(2). Between the Debtors, Chapter 13 Trustee, U.S. Trustee, and Applicant, the court will be able to properly determine the Motion.

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 Compensation filed by R. Todd Luoma having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the hearing on the Motion for Compensation shall be conducted at 3:00 p.m. on xxxx, 2015. Supplemental Opposition, if any, shall be filed and served on

or before xxxx, 2015, and Supplemental Reply, if any, shall be filed and served on or before xxxx, 2015.

41. 10-48671-E-13 MICHAEL/TERRI RICKER — MOTION TO APPROVE LOAN MODIFICATION
JSO-2 Jeffrey Ogilvie — 1-26-15 [44]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 29 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 Michael Ricker ("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 $1,968.07 a month to $1,688.35 a month. The modification will reduce the principle balance to $287,600.00. The interest rate will reduce from 5.00% interest rate to 4.030% for years 1-30.

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

David Cusick, the Chapter 13 Trustee, filed a non-opposition on February 4, 2015.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with

the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed Michael Ricker 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 Michael Ricker ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 2680 Starlight Blvd., Redding, California, on such terms as stated in the Modification Agreement filed as Exhibit D in support of the Motion, Dckt. 47.

42. 14-32172-E-13 DPC-1 | GUILLERMO/AURORA HERNANDEZ Richard Chan | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-28-15 [24]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on January 28, 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.

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

The court's decision is to overrule the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtors cannot afford to make the payments or comply with

the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Avoid Judicial Lien of Asset Acceptance, LLC. If the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

The court on February 24, 2015 granted Debtors' Motion to Avoid Judicial Lien of Asset Acceptance, LLC. Therefore, the Trustee's objection is overruled.

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 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 17, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

43. 14-32172-E-13 RAC-1 | **GUILLERMO/AURORA HERNANDEZ** Richard Chan | **MOTION TO AVOID LIEN OF ASSET ACCEPTANCE, LLC** 1-22-15 [19]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (pro se), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Asset Acceptance, LLC ("Creditor") against property of Guillermo Hernandez and Aurora Hernandez ("Debtors") commonly known as 966 Duncraig Way, Calt, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $36,873.47. An abstract of judgment was recorded with **Sacramento** County on May 29, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $298,500.00 as of the date of the petition. The unavoidable consensual liens total $126,606.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $171,894.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Asset Acceptance, LLC, California Superior Court for Sacramento County Case No. 34-2011-00105046, recorded on May 29, 2012, Book 20120529 and Page 0715 with the Sacramento County Recorder, against the real property commonly known as 966 Duncraig Way, Calt, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

44. 10-47375-E-13 DAN HOWARD — MOTION TO MODIFY PLAN
SS-4 Scott Shumaker — 1-14-15 [70]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Dan and Joselyn Howard ("Debtors") filed the instant Motion to Confirm the Modified Plan on January 14, 2015. Dckt. 70.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection tot he instant Motion on February 9, 2015. Dckt. 87. The Trustee objects on the following grounds:

a. Debtor's modified plan proposes to increase the minimum percentage to unsecured creditors from 2% to 5% where the plan estimates the total unsecured at $119,845.63 and thus the dividend would be $5,992.29. To date, the Trustee has disbursed $8,429.09, which is approximately 7%, so $2,436.80 has been disbursed over and above the dividend proposed in the modified plan. The Trustee does not oppose the modified plan percentage

as a minimum, provided the Debtor is not attempting to limit prior disbursements.

b. Attorney's fees as proposed in the modified plan are not clear. Under the confirmed plan, $2,000.00 was paid prior to filing the case with $1,500.00 paid through the plan. The Trustee has disbursed $1,500.00. Section 2.06 of the proposed modified plan indicates $2,000.00 in attorney's fees was paid prior to the filing of this case and refers to additional provisions regarding additional fees to be paid through the plan. Section 6.012 states, "Heard concurrently with the Motion to Confirm this Modified Plan is Debtors' Attorney's Motion for Additional Attorney's fees. To the extent that the court grants the Motion, Attorney's Fees shall be paid prior to distribution to general unsecured non-priority creditors." Neither Debtor's Motion or Declaration address increased attorney's fees and the Trustee is unable to locate a Motion for Additional Attorney's fees within the docket. The Trustee has no way of knowing what the proposed additional attorney's fees are or how it will affect Debtor's plan. The Trustee believes Section 2.06 should reflect attorney's fees as they are under the confirmed plan, and any language regarding additional fees should be kept in the additional provisions only. The Trustee has previously raised this objection.

c. The Trustee is uncertain of the treatment of Franchise Tax Board. Debtors' modified plan no longer provides for Franchise Tax Board as a Class 5 unsecured claim entitled to priority. Under the confirmed plan (Dckt. 8), Franchise Tax Board is provided for as a Class 5 claim for $1,655.00. Franchise Tax Board filed a claim (Proof of Claim No. 10) on December 29, 2010 for $1,784.96, of which $1,653.65 is entitled to priority. The Trustee has paid the priority portion in full. Debtors' proposed modified plan no longer provides for this creditor nor does it authorize payments made by the Trustee to this creditor. The Trustee has previously raised this objection.

d. Debtors' original Schedule I filed October 10, 2010 (Dckt. 1) budgeted $130.00 per month for a 401k loan. Debtors' plan payments under the confirmed plan increased in month 39 by $130.00 from $341.00 to $471.00 due to Debtor's 401k being paid off. Debtors' Amended Schedule I budgets $463.00 in monthly payments on a 401k loan. It would appear Debtors borrowed additional funds from their 401k retirement funds.

Debtors' Motion and Declaration indicate Debtor borrowed $25,000.00 from his 401k in June 2012 to pay $14,000.00 in mortgage arrears to Wells Fargo, $1,700.00 for vehicle repairs, $700.00 for new tires, with remaining funds placed in savings and used for ongoing mortgage payments where the money disappeared quickly.

Debtors' Motion and Declaration indicate Debtor was not aware that he was obligated to seek court approval to take out a 401k loan, but because of the arrears situation with his mortgage

"he panicked and took out a loan quickly so as to save his primary residence." The Trustee would note Debtor has since received court approval (Dckt. 49) for a loan modification where mortgage payments were reduced from $1,707.00 to $1,148.33 including escrow.

While Debtor admits to borrowing additional funds from his 401k and testifies he was unaware at the time that he needed court approval, Debtor still has not filed a Motion to approve the funds previously borrowed.

e. Debtors' modified plan proposes a plan payment of $16,831.00 total paid in through December 2014 (month 49), then $268.00 per month for months 50 through 60. December 2014 is actually month 50 where Debtors' petition was filed October 14, 2010, therein making the remaining payment of $268.00 per month payable over months 51 through 60. The Trustee would have no objection if this was corrected in the order confirming.

DISCUSSION

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

The Trustee's objections are well-taken. The Trustee had previously raised these objections in Debtor's prior Motion to Confirm (Dckt. 58) in which the court sustained the objections and denied the motion (Dckt. 63). A comparison of the prior proposed plan and the instant proposed plan shows that the Debtor did very little to alter the plan to address the concerns of the court and the Trustee.

The attorney's fees provisions still remains convoluted and inconsistent with the Local Bankruptcy Rule for an attorney seeking additional legal fees for necessary and unanticipated legal services in excess of the set fee counsel agreed to accept for the case. The exact language in Section 6.02 appears in both the prior proposed plan and the instant proposed plan, evidencing the Debtor and Debtor's counsel apparent lack of diligence at preparing a confirmable plan.

The plan does not provide for or authorize the Trustee's prior disbursement to creditors nor does it even properly state at what month the proposed plan payments are to start. Furthermore, as noted by the Trustee, the Debtor still has not attempted to get retroactive authorization for the 401k loan, once again raising serious concerns as to whether Debtor and Debtor's counsel are prosecuting this case with diligence.

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

FN.1. The court notes that the Debtors are now divorced and that Josie Howard has elected to have her case converted to one under Chapter 7. The court is

confident that the Chapter 13 Trustee will transmit to the Chapter 7 Trustee, concerns, if any, relating to Josie Howard's conduct in this case.

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

This inability to attention on even the basic scale raises serious questions at not only the feasibility and viability of the plan, but whether the proposed plan is even close to the Debtor's best efforts. Filing a nearly identical proposed plan that the court had already denied is concerning to the court and a blatant waste of judicial resources.

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

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

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

45. 14-32176-E-13 DPC-1 RALPH/MELANIE BOYER Peter Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-28-15 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 28, 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 overrule the Objection.

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

1. Debtors' plan may not be the Debtors' best efforts under 11 U.S.C. § 1325:

   a. Form 22C-2. Debtors fail to pay enough under their current claimed Form 22C-2. Debtors are above median income and propose a 60 month plan paying $150.00 per month for 36 months and $250.00 per month for 24 months with a dividend of 9% to unsecured claims. Form 22C-2 shows $121.74 per month of

calculated monthly disposable income available to unsecured claims (Dckt. 1, pg. 17, line 45). The plan proposes no less than 8% of $80,678.00, which would be $107.57 per month to unsecured claims (Dckt. 5, pg. 4, § 2.15). Debtors claim taxes of $1,110.68 on Form 22C-2, item 16 (Dckt. 1, pg. 14) when Schedule I (Dckt. 1, pg. 35)shows $166.99 less being paid ($511.57 + $432.12 = $943.69). Debtors claim they spend $1,054.69 on health insurance on Form 22C-2, item 25 (Dckt. 1, pg. 14), when Schedule I appears to show $421.88 less, (if $632.81 is the actual amount deducted for health insurance at all, Dckt. 1, pg. 35, line 5e).

b. Form 22c-2(Income). A review of Debtors' pay stubs in comparison with Form 22C-2 and Schedule I, shows that the Debtors earn more than is reported.

Debtor, Ralph Boyer's pay stubs reveal that he earns approximately $3,133.28 per month net, which is approximately $613.56 per month net over what is being reported (in regular earnings). Mr. Boyer also earns commissions which are not reported. A review of the commission checks show that the Debtor received an average of $365.40 per month net in commission over the six months prior to filing. Based on the calculation of the pay stubs, the Trustee calculated that the Average per pay date gross is $2,493.23 and the net is $1,566.64. The Trustee calculates that per month that equates to a gross of $4,986.45 and net of $3,133.29. Schedule I lists the gross at $3,736.47 and net of $2,519.72. The Trustee notes that is a difference of $1,249.98 gross and $613.56 net.

At the 341 Meeting, Debtor Ralph Boyer indicated that his commission checks are periodic and that he averages about 6 commission checks per year or approximately $200.00 per month if averaged over the year. With the additional wages not reported and the commission, it appears that this Debtor has as much as $816.56 per month in additional disposable income.

c. Form 22c-2(Income). A review of Debtors' pay stubs in comparison with Form 22C-2 and Schedule I, shows that the Debtors earn more than is reported.

Debtor Melanie Boyer's pay stubs reveal that she earns approximately $2,574.71 gross and $2,009.56 per month net, which is approximately $40.32 per month less than what is being reported. Melanie Boyer's pay stubs also reveal that she received a bonus of $500.00 on November 25, 2014 and another $500.00 bonus on July 15, 2014, these bonuses are figured into Debtor's income, however, the Trustee is uncertain if the amount remains the same annually.

Based on the information of both Debtors, the Trustee argues that the plan payment could be increased by $776.24 ($816.56-$40.32) based on a simple review of the Debtors' pay stubs. The plan payment should be $776.24 for 36 months and $876.24 for 24 months.

2. Debtor Ralph Boyer reports on Schedule I a deduction of $10.34 for repayment of 401k loan repayment. The actual amount deducted monthly is $51.69 per pay period and the Debtor is paid twice a month for a total of $103.38 per month. While this does not effect the above analysis since it is calculated in the pay stubs, the Trustee notes that it is erroneously calculate and disclosed on the Debtors' Schedule I.

3. The Debtors' deduct on Schedule I, $632.81 per month for health insurance deductions from Debtor Ralph Boyer's payroll. The actual amount deducted each month is $1,124.40 or $562.20 per pay period.

4. The Debtors cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6). The Debtors propose to value the secured claim of US Bank and if not granted, the plan would not be confirmable.

DEBTORS' REPLY

The Debtors filed a reply on February 10, 2015. Dckt. 30. The Debtors respond as follows:

1. There has been no opposition to the Debtors' pending Motion to Value.

2. Debtors acknowledge Trustee's corrections resulting in plan payments of: [($780.00 x 36) + ($880.00 x 24)]. Debtor Melanie Boyer's semi-annual "$500.00 bonus" while not guaranteed, have been regular and stable thereby the bonus is "figured into Debtors' average income." As such, it is appropriate to increase the plan payments in the Order Confirming to read: [($780 x 36) + ($880 x 24)].

3. Erroneous deductions are not material as it does not effect plan upon increasing plan payments in the Order Confirming. Given the corrects in the Order Confirming, which increases the plan payments, these particular erroneous deductions, and therefore should no longer effect confirmation of this plan.

DISCUSSION

The Trustee's objections are well-taken.

To start, the Debtors' Motion to Value Collateral of US Bank, N.A. (Dckt. 18) was granted at the February 24, 2015 hearing. Therefore, the Trustee's objection as to the Motion to Value is overruled.

However, a review of the Debtors' pay stubs in comparison to the Debtors' Schedule I shows that the Debtors are not providing their full disposable income and are inaccurately reporting their deductions. While the Debtors attempt to argue that the inaccuracies on Schedule I are not material, the failure to provide the truthful deductions on a schedule signed under the penalty of perjury is material. The Debtors should file amended schedules to ensure that they correctly reflect the financial reality of the Debtors.

The Debtors do concede that the calculation of the disposable income by the Trustee is accurate. The Debtors suggest that the Order Confirming the plan could contain the provision increasing the plan payments to $780.00 for 36 months and $880.00 for the remaining 24. This increase in plan payments would provide for all of the Debtors' disposable income.

Therefore, because the plan payments will be increased in the Order Confirming, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 17, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan stating that the plan payments shall be $780.00 for 36 months and $880.00 for the remaining 24 months, 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.

46. 14-32176-E-13 RALPH/MELANIE BOYER
PGM-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF US BANK, N.A.
1-23-15 [18]

Final Ruling: No appearance at the February 24, 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 23, 2015. By the court's calculation, 32 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 US Bank, N.A. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Ralph and Melanie Boyer ("Debtor") to value the secured claim of US Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1406 Glenwood Road, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $150,000.00 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 $158,297.17. Creditor's second deed of trust secures a claim with a balance of approximately $40,419.00. 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 Ralph Boyer ("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 US bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 1406 Glenwood Road, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $150,000.00 and is encumbered by senior liens securing claims in the amount of $158,297.17 which exceeds the value of the Property which is subject to Creditor's lien.

47. 12-26077-E-13 VINCENT/MARTHA HOWELL MOTION TO MODIFY PLAN
SDB-4 Scott de Bie 1-6-15 [59]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

The 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 January 6, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

48. 10-25678-E-13 ARTURO/ELIUTH AGUILAR
MRL-1 Mikalah Liviakis

MOTION FOR COMPENSATION FOR MIKALAH R. LIVIAKIS, DEBTORS ATTORNEY(S)
1-26-15 [80]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 26, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered.

The Motion for Allowance of Professional Fees is denied without prejudice.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Arturo Aguilar and Eliuth Aguilar, Debtors in Possession ("Client"), makes a Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period September 18, 2014 through January 22, 2015. Applicant requests fees in the amount of $637.00.

The instant case was filed on March 9, 2010. On July 24, 2014, the court granted Debtors' application to substitute Applicant into the case to represent Debtors for the remainder of the case.

On September 11, 2010, the court issued an order confirming the Chapter 13 Plan. Dckt. 48. The order stated that:

> **IT IS FURTHER ORDERED** that attorney fees for Debtor's attorney in the full amount of $3,500.00 are approved, $2,000.00 of which was paid prior to the filing of the petition. The balance of $1,500.00, provided that the attorney and debtor have executed and filed a Rights and Responsibilities of Chapter 13 Debtors and Their Attorney shall be paid by the Trustee from plan payments at the rate of $133.00 per month upon confirmation.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or

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

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

Benefit to the Estate

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

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

Id. at 959.

“No-Look” Fees

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

> “(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be

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

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,500.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 45. Applicant prepared the order confirming the Plan.

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

In rare or exceptional instances, if the court determines that the lodestar figure is unreasonably low or high, it may adjust the figure upward or downward based on certain factors. *Miller v. Los Angeles County Bd. of Educ.*, 827 F.2d 617, 620 n.4 (9th Cir. 1987). Therefore, the court has

considerable discretion in determining the reasonableness of professional's fees. *Gates v. Duekmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). It is appropriate for the court to have this discretion "in view of the [court's] superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters." *Hensley*, 461 U.S. at 437.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 0.70 hours in this category. Applicant assisted Client with reviewing claims (12 minutes), reviewing motion to value (6 minutes), calling the Debtors about said motion (12 minutes), and reviewing and revising the application for compensation (12 minutes).

Significant Motions and Other Contested Matters: Applicant spent .30 hours in this category and his associate spent 1.20 hours in this category. Applicant prepared for and attended motion to value hearing (18 minutes). His associate drafted the motion to value (36 minutes) and drafted the instant motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Applicant (Reviewing Claims)	.20	$355.00	$71.00
Applicant (Reviewing motion to value)	.10	$355.00	$35.50
Applicant (Calling Debtor)	.10	$355.00	$35.50
Applicant (Calling other Debtor)	.10	$355.00	$35.50
Applicant (preparing for and attending motion to value hearing)	.30	$355.00	$106.50
Applicant (reviewing and revising instant motion)	.20	$355.00	$71.00
	0	$0.00	$0.00

Total Fees For Period of Application	$355.00

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Applicant's Associate (Drafted motion to value)	.6	$235.00	$141.00
Applicant's Associate (Drafted Instant motion)	.6	$235.00	$141.00
	0	$0.00	$0.00
Total Fees For Period of Application			$282.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

Here, the Applicant has provided no explanation or argument as to why the court should grant additional fees in excess of the $3,500.00 already authorized as "no-look" fees in the Order confirming the Chapter 13 Plan. While Applicant was substituted in as counsel on July 24, 2014, presumably after the Trustee disbursed the remaining $1,500.00 in attorney fees to Debtors' previous counsel, the Applicant is still requesting fees in excess of those provided for in the authorized "no-look" fees.

The services that the Applicant is seeking additional compensation for was the drafting and hearing on a Motion to Value. The court had previously granted the Motion to Value on April 24, 2012. Dckt. 60. The reason for the Applicant re-filed the Motion to Value was the Applicant was concerned that the creditor was not served correctly. While this is a legitimate concern and proper service on the creditor whose rights are being altered is necessary, the Applicant in the instant Motion is seeking to have the Debtors and the estate pay twice for the same motion.

The Applicant has not provided any evidence that the Motion to Value which Applicant seeks compensation for justifies the additional fees. The Applicant appears to implicitly rely on the argument that because the services rendered were to correct the deficiencies in a prior motion due to improper service by the Debtors' former counsel, the second Motion to Value is "substantial and unanticipated." However, this argument is not persuasive nor does it provide the necessary evidence for additional fees. Perhaps the Applicant should seek fees from prior counsel for the services that are the basis of the instant Motion, but the Applicant has not shown that the services were "substantial and unanticipated" in order to justify an additional $637.00.

It may well be that the $637.00 must be reallocated from the $3,500.00 fixed fee which has been approved for Debtor's counsel. Merely because the Debtor changes counsel does not mean that duplicate fees will be paid from the estate.

Therefore, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Mikalah Raymond Liviakis ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without prejudice.

49. 10-52479-E-13 WW-5 | **ROBERT/DEE DEE DLUGOPOLSKI** Mark Wolff | **MOTION TO MODIFY PLAN** **1-9-15 [85]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Robert and DeeDee Dlugopolski ("Debtors") filed the instant Motion to Confirm the Modified Plan on January 9, 2015. Dckt. 85.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 10, 2015. Dckt. 92. The Trustee objects on the following grounds:

a. The order confirming plan (Dckt. 22) reflects additional attorney fees of $1,000.00 to be paid through the plan and the proposed plan lists additional attorney fees of $2,000.00 to be paid through the plan.

b. The Debtors' are proposing to reduce the dividend to unsecured creditors to 12% from confirmed 13%. The Trustee has disbursed

a total of $48,068.23, approximately 13.82%. The Debtors' proposed modified plan does not authorize these payments.

The Trustee states that he has no opposition to these matters being addressed in the order confirming.

DISCUSSION

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

The Trustee's objections are well-taken. The proposed plan appears to add an additional $1,000.00 to be paid through the plan, a total of $2,000.00. The order confirming the original plan stated that the attorney's fees in the amount of $5,000.00 are approved, with $4,000.00 being paid prior to the filing and $1,000.00 through the plan.

The proposed plan also does not approve the prior distribution under the originally confirmed plans.

Because these items can be remedied in the order confirming the plan and they appear to be mere scriviner's error forgetting the authorization of prior disbursement and a type concerning attorney's fees, the court finds that the plan does comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed following the corrections mentioned supra.

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 January 9. 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan correcting the attorney's fees to be paid through the plan to $1,000.00 and adding a provision authorizing the prior disbursements, 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.]

50. 15-20080-E-13 JESUS/JESSICA CARDENAS
AFL-1 Ashley Amerio

MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE
1-26-15 [16]

Final Ruling: No appearance at the February 24, 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 26, 2015. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of CarMax Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of $15,551.00.

The Motion filed by Jesus Cardenas, Sr. And Jessica Cardenas ("Debtor") to value the secured claim of CarMax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Mercedes-Benz C 300463 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $15,551.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on March 19, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,869.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $15,551.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Jesus Cardenas, Sr. And Jessica Cardenas ("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 CarMax Auto Finance ("Creditor") secured by an asset described as 2009 Mercedes-Benz C 300463 ("Vehicle") is determined to be a secured claim in the amount of $15,551.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $15,551.00 and is encumbered by liens securing claims which exceed the value of the asset.

51. 15-20080-E-13 JESUS/JESSICA CARDENAS — MOTION TO AVOID LIEN OF PROFESSIONAL COLLECTION CONSULTANTS
AFL-2 Ashley Amerio — 1-26-15 [21]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 26, 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 judicial lien of Professional Collection Consultants (“Creditor”) against property of Jesus Crispin Cardenas, Sr. And Jessica Desiree Cardenas,(“Debtors”) commonly known as 1419 East Gum Ave. Woodland, California (the “Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of $2,575.00. An abstract of judgment was recorded with Yolo County on September 18, 2007, which encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of $409,970.00 as of the date of the petition. The unavoidable consensual liens total $697,951.00 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Professional Collection Consultants, California Superior Court for Yolo County Case No. G06-2101, recorded on September 18, 2007, Document No. 2007-0032633-00 with the Yolo County Recorder, against the real property commonly known as 1419 East Gum Ave. Woodland, California , California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

52. 11-42081-E-13 GARRY/BEVERLY DRAKE MOTION TO MODIFY PLAN
CAH-1 Oliver Greene 1-16-15 [45]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Garry and Beverly Drake ("Debtors") filed the instant Motion to Confirm the Modified Plan on January 16, 2015. Dckt. 45.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 10, 2015. Dckt. 52. The Trustee objects on the grounds that the Trustee is uncertain of the stated "miscommunication" between the Debtors' and prior legal representation. The Debtors' declaration (Dckt. 47, pg. 2, No. 4b) states "Due to a miscommunication between us and our previous attorney, the 401k loan deduction was listed improperly. The 401k loan is still an on-going monthly deduction and will exceed the life of the plan."

The order confirming the plan (Dckt. 21) lists step payments as "[p]lan payment shall be $426.00 until the 29th month. Beginning on the 30th month of the plan the plan payment shall be $567.00 until the 47th month of the plan. Beginning the 48th month of the plan the plan payment shall be $631.00 for the remainder of the plan due to the pay off of 401k loans."

The Debtors have not provided the Trustee nor the court any evidence of the stated "miscommunication." No 401k loan statements have been provided to prove the Debtors current statements regarding the length of the loans.

DISCUSSION

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

The Trustee's objection is well taken. The issue here is how, after an explicit provision in the plan that provides step up once the 401k loan is paid off, there was a "miscommunication" concerning the treatment of the 401k loan. The terms of the confirmed plan are explicitly contingent on the pay off of the 401k loan. Outside of just stating that a "miscommunication" took place, the Debtors do not provide any evidence or explanation as to what this miscommunication was or how it resulted in a confirmed plan having step up payments after the completion of the 401k loan payments.

While the Debtors do provide additional evidence of changed circumstances that would possibly justify a modification, the court is equally as concerned as the Trustee is as to what "miscommunication" took place that resulted in a confirmed plan where step up would take place after the payment of a 401k loan. The court cannot fathom what type of miscommunication would have taken place where Debtors' previous counsel would craft a plan based on the information provided by the Debtors that would step up after the payment of a 401k loan that the Debtors are now representing under the penalty of perjury would not be completed prior to the completion of the plan.

The order confirming the original plan provided specific order language concerning the step up, which is an order drafted by the Debtors' previous attorney and sent to the Trustee for approval prior to the court's approval. The Debtors' do not explain how or why this provision was provided for in the order, outside of just stating a "miscommunication."

Furthermore, the Debtors do not provide any exhibits as to the 401k loan. The Debtors do not provide 401k statements nor the actual loan information.

Because the Debtors have failed to properly explain the "miscommunication," the court cannot determine the feasibility or viability of the plan as presented.

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

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

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

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

53. 15-20683-E-13 DEREK WOLF **MOTION TO EXTEND AUTOMATIC STAY**
PGM-1 Peter Macaluso **2-5-15 [10]**

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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 5, 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 granted.

Derek Wolf ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 12-34358-C-13C) was dismissed on January 6, 2015, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 12-

34358-C-13C, Dckt. 129, January 6, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith in order for the Debtor to retain his vehicle.

However, the Debtor does state in the Motion why the previous case was dismissed or why, in the instant case, the Debtor is able to make the required plan payments. Without more information as to why the Debtor failed to make plan payments in the previous case, the court cannot determine if the Debtor is capable of performing in the instant bankruptcy case. The Debtor provides an explanation of his current financial situation but does not state what has changed since the first case's dismissal on January 6, 2015 that shows that the present plan is likely to succeed.

In his Declaration, Debtor states the following with respect to the defaults in the prior case.

> 10. I am refiling bankruptcy due to financial hardship. I was able to get a very good loan modification on my home, but it has stretched my budget to the limits. Due to the holiday season, my work weeks were shortened so my income was less and I couldn't make up the missed payments by the deadline I was given. I tried to plead with the Trustee to no avail and my case was dismissed. When the repo man showed up at my house at 4am on January 10th, I felt that I had no choice but to refile for bankruptcy.
>
> 11. Since my case was dismissed, my situation has changed. Since the holidays are over, I have resumed my regular work schedule and will have my budget under control so I can make my payments on time.

Declaration, Dckt. 12.

While the second case within one year, the current bankruptcy case is the Debtor's third since 2011. The first case was one filed under Chapter 7, for which the Debtor received his discharge on May 23, 2011. 11-22709. A year later he commenced the second case, 12-34358, on August 3, 2012. The second case was dismissed on January 6, 2015. The defaults in the second case noticed by the Trustee were for the months September and October 2014. 12-34358, Dckt. 126. The Debtor's payment history in the second case was marred by multiple defaults. In reviewing the plan payment history included in the Notice of Default, *Id.*, Debtor defaulted and was one or two months behind during the February - August 2014 period.

The proposed Chapter 13 Plan provides for a $175.00 a month payment by Debtor for a period of 60 months. These monies will be used to pay the Chapter 13 Trustee fees, $3,200.00 of attorneys' fees for Debtor's counsel, and a $105.00 payment to the creditor having a lien on the Debtor's 2006 Honda Pickup. No other creditors are paid through the Plan and the Debtor has no creditors with general unsecured claims (while providing for a 100% dividend, Debtor states that there are $0.00 in general unsecured claims). Plan, Dckt. 7.

The creditor having a lien on the vehicle has filed a Proof of Claim for $13,194.07, asserting that the vehicle has a value of $7,971.00. It is asserted that the pre-petition arrearage is $3,413.16. The contract interest rate asserted by Creditor is 15.99%. Proof of Claim No. 1. The Chapter 13 Plan provides for this creditor's secured claim in the amount of $5,537.71 and no provision for payment of any unsecured portion of the claim. The payment of attorneys' fees, Trustee's fees, and the secured claim exhausts $169.00 of the $175.00 a month plan payment. The "extra" $5.00 totals only $300.00 over the 60 months of the plan.

Debtor's ability to prosecute this case appears to be problematic. He has suffered multiple defaults in the second bankruptcy case, leading to its dismissal. In that case the plan payments were higher, $360.00 a month, which resulted in multiple defaults. In many respects the case is being prosecuted to pay attorneys' fees and Trustee fees.

On the other hand, Debtor is attempting to provide for a high interest rate loan, for an amount everyone agrees is well in excess of the collateral, for a nine year old vehicle. Without the relief afforded in a bankruptcy case, the Debtor would not be able to keep this old vehicle.

On the thinnest of margins the Debtor has rebutted the presumption and the court extends the automatic stay in this case.
The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 granted and the automatic stay is extended in this case pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and persons, remaining in full force and effect until terminated by further order of this court or operation of law.

54. 11-22884-E-13 WSS-2 — WENDEL/MARY APPERT — Steven Shumway — MOTION TO APPROVE LOAN MODIFICATION — 1-6-15 [50]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is denied without prejudice.

The motion seeks retroactive permission for the court to ratify three loans Wendel and Marry Appert ("Debtors") incurred from Debtor Wendel Appert's 401k. Debtors seek approval for three separate loans incurred.

The first was for $21,400.00 to replace the roof which will mature on September 30, 2017. Debtors state that they are paying $198.11 per pay period on this loan.

The second loan is from a refinancing of an existing 401k loan in June 2013 in order to borrow an additional $7,200.00 to pay property taxes, homeowner's insurance, auto repairs and schooling expense. The total of the second loan is $9,500.00. The Debtors state that the loan will mature June 30, 2018 and are paying $87.95 per pay period.

The third loan is from a refinancing of an existing 401k loan in April 2013 in order to borrow an additional $10,400.00 to pay property taxes, homeowner's insurance, auto repairs, and schooling expenses. The total of the third loan is $12,980.00. The Debtors state that the loan will mature April 15, 2019 and are paying $120.17 per pay period.

The Debtors state that when they filed their bankruptcy in February 2014, the Debtors were paying $876.64 per month on 401k loans. They are now paying $812.46 per month.

Attached to the Motion, the Debtor's provide an "accounting" of what the money was used for. Below is the breakdown:

Loan 1	**Total = $21,400.00**
$21,400.00	Used to pay for new roof for house

Loan 2	**Total = $9,500.00**
$2,310.00	To pay off previous 401k loan early
$500.00	To pay home insurance
$1,850.00	Car maintenance and repairs
$1,600.00	Children's schooling expenses
$1,000.00	Property tax increase
$840.00	Increased fuel/electric costs
$1,400.00	Increased food/household products costs

Loan 3	**Total = $12,980**
$2,578.00	To pay off previous 401k loan early
$500.00	To pay home insurance
$2,800.00	Car maintenance and repairs
$1,800.00	Increased federal taxes
$1,600.00	Children's schooling expenses
$1,000.00	Property tax increase
$800.00	Medical Expenses

$650.00	Increased fuel/electric costs
$1,252.00	Increased food/household products costs

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 10, 2015. Dckt. 61. The Trustee states that at the First Meeting of Creditors held on March 17, 2011, the Debtors agreed to increase their plan payments once the 401K loans listed on Schedule I, line#d were paid in full. Dckt. 1, pg. 34.

The Debtors fail to list the month in which the first 401K loan originated, outside of stating it was incurred in 2012. The motion only states the roof was failing to the point where it could not be repaired and had to be replaced.

The Trustee provides the following comparison between the original schedules I and J with the supplemental schedules I and J.

	Original Schedule I	Supplemental Schedule I	Difference
Gross Income	$10,054.96	$10,834.58	$779.62
Payroll Tax/Social Security	$970.00	$1,919.78	$949.78
Voluntary Contributions	$402.20	$306.98	($95.22)
Insurance	$100.00	$208.34	$108.34
EDS Pre Tax	$382.02	$497.74	$115.72
EDS Post Tax	$11.60	$32.78	$21.18
401K Loan	$876.64	$812.46	($64.18)
Net Income	$7,312.50	$7,056.50	

	Original Schedule J	Supplemental Schedule J	Difference
rent/mortgage	$2,340.00	$2,3400	$0.00
Electricity and heating fuel	$400.00	$400.00	$0.00
Water and Sewer	$138.00	$151.00	$13.00

Telephone	$55.00	$55.00	$0.00
Life Insurance	$44.00	$0.00	($44.00)
Cell phone	$254.00	$254.00	$0.00
Home maintenance	$300.00	$200.00	($100.00)
Food	$1,300.00	$1,200.00	($100.00)
Clothing/laundry	$280.00	$280.00	$0.00
Installment payment	$130.00	$130.00	$0.00
Transportation	$725.00	$600.00	($125.00)
Recreation	$100.00	$0.00	($100.00)
Auto Insurance	$200.00	$175.00	($25.00)
Child care/education	$0.00	$150.00	$150.00
Property insurance/taxes	$567.00	$608.00	$41.00
Medical/dental	$200.00	$200.00	$0.00
Charity	$20.00	$20.00	$0.00

Trustee argues that the Debtors' second and third 401k loans appear to have been used for many expenses already provided for in Debtors' Schedule J, absent the federal taxes and children's school expenses.

The Trustee states that the Debtors have failed to provide the Trustee with proof of any of the additional expenses and why it was necessary to obtain $43,880.00 post-petition debt.

DISCUSSION

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

The Debtor does not address the reasonableness of incurring three separate post-petition 401k loans while seeking the extraordinary relief under Chapter 13 to discharge debts. While the Debtors do provide generic categories of the expenses, the Debtors do not provide any explanation of how or why these new, substantial expenses arose. The Debtors "expense report" of how the monies

were spent does not provide any further insight. The Debtors here are seeking not only one, but three, retroactive authorization to incur debt without providing the court any reason why they did not get court approval outside of the explanation “oops, we forgot.” This is not reasonable.

Most troubling, however, is the fact that Debtors incurred three separate 401k loans post-petition without court approval and in direct violation of the confirmed plan. The Debtor was not authorized to incur such debt, and electing to do so calls into question whether confirmation of the Plan in this case was properly confirmed, the statement made under penalty of perjury in the Schedules and to confirm the plan were truthful, and if the Debtor filed and is prosecuting this case and Plan in good faith.

As the Trustee points out in his objection, the rudimentary accounting along with the failure to explain what appears to be double counting of most expenses is troublesome at best, and at worst, a willful violation of the Bankruptcy Code.

The Debtors may have to review their budget and pay for the additional borrowing from the discretionary funds in their budget. Saying “oops, did I do that,” now we’ll just let the creditors pay me back for taking money out of my 401k without authorization is not a sign of good faith - either in the proposing of a plan so providing or prosecuting the case. The Debtors may well find themselves on the wrong end of a motion to dismiss (possibly with prejudice).

The Debtors have failed to provide sufficient evidence and explanation for the court to grant the extraordinary relief of retroactively authorizing three separate post-petition 401k loans. Therefore, the motion is denied without prejudice.

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

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

55. 11-22884-E-13 WENDEL/MARY APPERT MOTION TO MODIFY PLAN
WSS-3 Steven Shumway 1-6-15 [55]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Wendel and Marry Appert ("Debtors") filed the instant Motion to Confirm the Amended Plan on January 6, 2015. Dckt. 55.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 10, 2015. Dckt. 64. The Trustee objects on the following grounds:

a. The Trustee is not convinced that the Debtors' increased step plan payments were forgotten. The Debtors' supporting declaration (Dckt. 57, pg. 1, No. 2) states "We forgot that our chapter 13 plan included a provision for an increase in payments in August of 2014." The order confirming plan (Dckt. 32, pg. 2, lines 8-9) clearly states "Debtors' plan payments will increase to $630.00 per month beginning August 25, 2014

and then to $698.00 per month beginning January 25, 2015." According to the Trustee's records, it appears the Debtors' have consistently paid $260.00 per month for 46 months, ignoring the ordered step increases.

b. The Debtors' should be able pay an amount of $600.48 per month for the remaining 13 months of the plan. After reviewing and comparing of the Debtors' pay stubs (Dckt. 66, Exhibits 1-4) and Debtors' Schedule I (Dckt. 58, pgs 6-8), Debtors' Schedule I reflects a deduction of $306.98 listed as "voluntary contributions," which does not appear on Debtor's pay stubs. It would appear that the Debtors have additional disposable income to pay into the plan.

c. The Trustee's records show the Debtors are delinquent $2,254.50. This delinquency is due to Debtors failure to step up the plan payments per the order confirming the plan. Debtors are in month 48 on their 60 month plan, and have 13 plan payments remaining. Taking the $2,254.50 delinquency dividing it by 13 months yields $173.43 per month to cure the delinquency over the remaining life of the plan. Based on the apparent additional disposable income of $306.98, Debtors have enough income to increase their proposed modified plan payment of $293.50 to $600.48, which is more than sufficient to cure the delinquency under the confirmed plan rather than seeking to excuse it.

DISCUSSION

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

The Trustee's objections are well-taken. It appears that these Debtors are "forgetful" of most, if not all, of their responsibilities in their bankruptcy. The Debtors argue in the instant Motion that the reason for the delinquency and the need to modify is that the Debtors forgot about the step up. However, as the Trustee pointed out, the order confirming the original plan was explicit in the step up payments. The Debtors do not provide any explanation as to why or how they have failed to recognize after nearly six months of ordered step-up payments pursuant to the order confirming the original plan.

Furthermore, as the Trustee notes, the Debtors do not explain why the Debtors should not cure the delinquency and operate under the confirmed plan instead of trying to modify the plan to a substantially lower amount monthly payment.

The Debtors in their Motion attempt to offer the explanation that the incurring of three, separate, unauthorized, post-petition 401k loans justifies the court confirming a plan that substantially lessens the plan payments. The failure of the Debtors to receive court authorization for the pre-petition debt does not excuse nor justify the Debtors' delinquency.

The Debtors may have to review their budget and pay for the additional borrowing from the discretionary funds in their budget. Saying "oops, did I do that," now we'll just let the creditors pay me back for taking money out of

my 401k without authorization is not a sign of good faith - either in the proposing of a plan so providing or prosecuting the case. It could well manifest a scheme to defraud creditors, the Chapter 13 Trustee, and the court, attempting to jam the court into confirming a modified plan that does not comply with the Bankruptcy Code. The Debtors may well find themselves on the wrong end of a motion to dismiss (possibly with prejudice).

The court questions whether this plan is, in fact, the Debtors' best efforts and whether the proposed plan is actually feasible and viable in light of the Debtors continued failure to abide by the Bankruptcy Code and their confirmed plan.

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

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

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

56. 14-29184-E-13 RAVEN TRAMMELL **MOTION TO CONFIRM PLAN**
PGM-1 Peter Macaluso **1-9-15 [53]**

Tentative Ruling: The Motion to Confirm 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, all creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

Raven Trammell ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 9, 2015. Dckt. 53.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an Objection to the instant Motion on February 10, 2015. Dckt. 67. The Trustee objects on the grounds that the Debtor is $25.00 delinquent in plan payments.

DEBTOR'S RESPONSE

The Debtor filed a response to the Trustee's objection on February 17, 2015. Dckt. 70. The Debtor states that she will be current on or before the hearing date.

DISCUSSION

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

The Debtor appears to still be delinquent under the proposed plan. The Debtor is $25.00 delinquent in plan payment. The Debtor has paid $552.00 into the plan to date. While the Debtor states that the $25.00 is minimal, it does not negate the fact that the Debtor must be current. Pursuant to 11 U.S.C. § 1325(a)(2), Debtor is required to make plan payments.

Due to the Debtor's failure, the objection is sustained.

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

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

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

57. 14-32084-E-13 DPC-1 STEVEN/SHARON COLLINS Brian Turner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-28-15 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 28, 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:

a. The Debtor has failed to provide the Trustee with Business Documents including: (1) Questionnaire; (2) Two years tax returns; (3) Six months of profit and loss statements; (4) bank account statements; (5) Proof of license and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Additionally, the Trustee has requested that the Debtor provide copies of the last four years of filed tax returns.

b. The Debtors cannot make the payments under the plan or comply with the plan because the plan relies on the Motion to Value the Secured Claim of Internal Revenue Service. No such motion has been filed to date.

c. The Trustee is unable to determine feasibility of the plan because the Debtor failed to file a Business Budget. Debtor's Schedule I reports $4,278.00 per month in net business income (Dckt. 10, pg. 20) and only report one expense of business taxes on Schedules J of $850.00 per month (Dckt. 10, pg. 22). On the Debtor's CMI, they report monthly gross receipts of $10,594.00 (Dckt. 1, pg 25, No. 5) and business expenses of $6,612.00 per month (Dckt. 1, pg. 35, No. 43a).

d. The Debtor failed to list prior bankruptcy cases on their petition, Case Nos. 11-46417 and 11-39208.

e. All sums required by the plan have not been paid, 11 U.S.C. § 1325(a)(2). The Debtor is $3,559.43 delinquent in plan payments to the Trustee to date and the next scheduled payment of $3,559.43 is due on February 25, 2015. The Debtor has paid $0.00 into the plan to date.

The Trustee's objections are well-taken.

The Debtor has failed to provide the required and necessary documentation to the Trustee as required by 11 U.S.C. § 521(e)(2)(A). This objection is sustained.

The proposed plan relies on the Debtor valuing the secured claim of the Internal Revenue Service. A review of the docket shows that no such motion has been filed to date. Without the court valuing the secured claim, the proposed plan is not feasible and the Debtor's would not have sufficient funds to comply with the plan. This objection is sustained.

The Debtor fails to provide a detailed Business Budget to allow the court and the Trustee to determine the feasibility of the plan as well as the financial reality of the Debtor. Without the necessary information, the court cannot determine if the proposed plan is viable or feasible. This objection is sustained.

Trustee alerts the court that the Debtor filed two previous Chapter 13 petitions. Case Nos. 11-46417 and 11-39208. The Debtor's recent bankruptcy case has implications for the duration of the automatic stay, *see* 11 U.S.C. § 362(c)(3), but is not by itself reason to deny confirmation.

Lastly, as stated by the Trustee, the Debtor appears to be delinquent under the proposed plan. The Debtor is $3,559.43 delinquent in plan payments and the Debtor has paid $0.00 into the plan to date. Pursuant to 11 U.S.C. § 1325(a)(2), Debtor is required to make plan payments. Due to the Debtor's failure, the objection is sustained.

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

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

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

58. 14-23385-E-13 MICHELE WILLIAMS — MOTION TO MODIFY PLAN
PGM-3 Peter Macaluso — 1-14-15 [63]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Michele Williams ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 14, 2015. Dckt. 63.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 4, 2015. Dckt. 69. The Trustee objects on the following grounds:

a. The Debtor proposes in Section 6.03 as adequate protection payment of $1,360.00 per month which is to be applied first to the post-petition interest accruing on this claim and then principal, or as specified in a loan modification.

   i. The Debtor's supplemental Schedule J (Dckt. 66) makes no provision for property taxes or insurance. Section 6.03 makes no provision that property taxes or insurance are included in the adequate protection payment. According to the most recent Notice of Mortgage Payment Change filed August 13, 2014, escrow amounts included in the payment totaled $533.94 ($1,775.92-$1,241.98). If the Debtor intends the adequate protection payment to include escrow, $826.06 is available for interest and principal payment.

   ii. The creditor has filed as Proof of Claim No. 7-1 a secured claim for $403,795.48 at a 2.675% variable interest rate. While the Plan proposes a payment of $1,360.00 as an adequate protection payment, the Debtor provides no evidence as to why this is adequate protection. The Trustee believes the Debtor has the burden of proof as to this issue, 11 U.S.C. § 362(g)(2). Under HAMP guidelines, the Trustee believes the mortgage payment should be approximately 31% gross income, which would be $1,698.01 under the income listed. No copy of any loan modification application has been included in the court recorded.

b. The Debtor proposes a $1,500.00 plan payment for January 2015. The adequate protection payment plus proposed monthly dividends to Class 2 creditors total $1,746.00 plus Trustee fees on a monthly basis.

c. The declaration filed by the Debtor offers no explanation of the changes in the Debtor's income or expense. The Debtor reports monthly income of $5,477.44 per Dckt. 66. The Debtor reported monthly income of $5,841.07 at the time of filing per Dckt. 1. This is a decrease in income of $363.63 per month. The Debtor's monthly expenses have increased from $2,945.61 at the time of filing to $3,474.01 currently, an increase of $528.40 without explanation.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's objection on February 17, 2015. Dckt. 72. The Debtor replied as follows:

a. Adequate protection payment does include an escrow. The Trustee is correct that there is $826.06 for interest and principle amount.

b. Debtor is awaiting receipt of loan modification for the Trustee from the servicing company.

c. Counsel for Debtor waives the attorney's fee disbursement until after the class 2 claims are disbursed.

d. Changes in expenses were based on pro per understanding of monthly budget not projected expenses throughout the year. The Debtor in this instance did not understand that the "expenses" were based on a yearly total, and not specifically the month that she filed in only. Debtor has submitted a declaration in support of the changes made.

DISCUSSION

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

The court notes that this is not the Debtor's first (or second or third) pending bankruptcy case since 2009. Debtor filed, in pro se, a Chapter 13 case on September 23, 2009, which was dismissed on November 10, 2009. 09-40428. Debtor then filed, in pro se, a Chapter 7 case on February 12, 2010. 10-2333. In that case she received her discharge on July 30, 2010.

Debtor commenced a Chapter 13 case, in pro se, on September 9, 2011. 11-41829. On November 28, 2011, Debtor's counsel in this case substituted in and represented Debtor in the 2011 case. Debtor confirmed a plan in the 2011 case. 11-41829; Order filed January 31, 2012, Dckt. 61. By February 2012, one moth later, Debtor filed a motion to modify the confirmed plan. *Id.*; Dckt. 72. Confirmation of the modified plan was denied.

A second modified plan was confirmed by the court on June 25, 2012. *Id.*; Order, Dckt. 100. By September 2012, the Chapter 13 Trustee filed a notice of default in plan payments by Debtor. *Id.*; Dckt. 102. This begat the Debtor filing a third modified plan and motion to confirm on October 12, 2012. *Id.*; Dckts. 108, 104. The court confirmed the Debtor's third modified plan on December 20, 2012. *Id.*; Order, Dckt. 113.

In August 2013, the Chapter 13 Trustee filed a notice of default in plan payments for June and July 2013. *Id.*; Dckt. 114. The Debtor responded, filing a fourth modified plan and motion to confirm. *Id.*; Dckts. 116, 117. The court confirmed the Fourth Modified Plan by order filed on November 1, 2013. *Id.*; Dckt. 129. By January 2014, the Chapter 13 Trustee had filed another notice of default, identifying defaults for three months. *Id.*; Dckt. 130. The case was then dismissed by order filed on March 24, 2014.

Debtor commenced the current case on April 1, 2014 (just seven days after dismissal of the prior Chapter 13 case in which there were multiple plan payment defaults and modified plans). The court confirmed the Debtor's Chapter 13 Plan in this case by order filed on June 18, 2014. Dckt. 56. In December 2014 the Chapter 13 filed a Notice of Default in this case in plan payments. Dckt. 61. The confirmed Plan required Debtor to make payments of $2,895.00 a month for forty-two months, and then the payments stepping up to $2,985.00 and

then to $3,065.00 a month. The Debtor had defaulted in the November and December 2014 payments. (The court notes from the Trustee's report of payment in the Notice, that the Debtor consistently ran one month in arrears with her plan payments.)

In seeking the various modifications, the Debtor has some routine and some extraordinary emergencies which have arisen. Each of these has derailed the Debtor in performing what she had promised. While the court is sympathetic to consumers dealing with everyday real life struggles, the Debtor and her counsel have demonstrated that the Debtor is not a credible witness with respect to her finances. It appears that Debtor and her counsel create whatever plan is the Debtor's dream, not one based on financial reality.

Debtor's response has been to file an amended plan in this case. Since commencing her Chapter 13 case in 2011, the Debtor has confirmed five plans spanning three years – with the Debtor defaulting on all of them. The current proposed plan promises that the Debtor will make monthly payments going forward of $2,000.00 a month for twelve months, and then stepping up the payments to $2,095.00 and then to $2,180.00.

The Trustee's objection concerning the adequate protection payment is well-taken. A review of the proposed plan and the supplemental pleadings show that the Debtor has not explained or provided information as to how the proposed adequate protection payments are sufficient. The Debtor, in her reply, does not provide any information on the sufficiency or adequacy of the proposed payment but instead only addresses the Trustee's first part of the objection concerning the escrow. The court cannot determine, based on the information provided, if the proposed payments is sufficient.

The Debtor's response is that $826.06 of the "adequate protection payment" to creditor is for the principal and interest on the Debt. Debtor does not clearly state in her response what the other money is for and how it is to be handled by the creditor. The proposed First Modified Plan in this case states that it is paid as an adequate protection payment to the creditor – not as a payment for taxes or insurance. Further, it states that the payment will be made first to post-petition interest and then to principal.

On Schedule A Debtor lists the her residence having a value of $316,000.00 and Wells Fargo Bank, N.A. having a secured claim well in excess of that amount. Assuming that the loan was modified to the present value of the property, with that amount amortized over 30 years at 3% interest, the monthly principal and interest payment would be $1,332.27. While the Debtor and Trustee discuss the principal and interest payments on the variable interest rate loan that Debtor admits she has to modify, the simple fact is that reducing the debt to the value of the property yields a payment (for a person with a good credit score) unreachable for Debtor.

The Trustee's objection as to insufficient plan payments, it appears that the proposed plan does not provide enough funds to fund the plan. While the Debtor responds by stating that the Debtor's counsel will waive disbursement until after the disbursement of class 2 claims, this does not cure the potential future issues of funding under the proposed plan.

The Debtor's response to the inaccurate expense information is not credible. This Debtor has been represented by counsel for three year, through

multiple plan modifications, multiple defaults, and multiple preparation of financial information. Merely stating that the Debtor did not “understand” that the expenses were to reflect her real, accurate expenses as averaged over the year is not sufficient. To say so implies that the Debtor believe she could make up a budget choosing the expenses from whatever month is lower to mislead the court, Trustee, and creditors.

Wile the supplemental declaration filed by the Debtor (Dckt. 73) explains the change in circumstances that led to an increase in expenses, including the health of her child and the damage to her home following the earthquake in August 2014, it does not address the feasibility of the Debtor to proceed in the good faith performance of the Chapter 13 Plan. Going back to the “explanations” for the extraordinary events which cause defaults under prior plans, this Debtor has testified:

A. Declaration in Support of Fourth Modified Plan, 11-41-829, Dckt. 119.

> “I have had several changes/problems that have arose which now require me to further modify my Chapter 13 Plan. These factors include; I missed payments because of three family incidents that recently occurred - my son was caught in a crossfire and was shot, my mom just went through a medical procedure and my daughter went back to the east coast for college - I have proof of all incidents and I am the "rock" of my family - the only one EVERYBODY depends on and needs. If I can place the missed payments on the end that would be great as I don't want to jeopardize having this case dismissed.”

B. Declaration in Support of Third Modified Plan, 11-41-829, Dckt. 106.

> “I have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I have incurred unexpected expenses on the rental property that was originally included in the plan however, I ended up surrendering the property. I incurred unexpected expenses related to getting my daughter off to college on the East Coast.”
>
> “I filed for protection under the bankruptcy code because I originally had a rental property and was having trouble with the tenants paying. There was also a death in my immediate family and loss of income from a family member.”

C. Declaration in Support of Second Modified Plan, 11-41-829, Dckt. 91.

> “ have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; I am Surrendering the real property currently in class one located at 8805 Scarlino Court, Vallejo CA.”

Using the information from Schedules I and J filed by Debtor in April 2014, the court considers the feasibility of the Debtor performing this modified plan (which following in the footsteps of five prior plans which have failed). While the Debtor reports have good income from a stable employer, the expenses listed on Schedule J are not reasonable as documented by the Debtor's bankruptcy history. Debtor has a child with significant medical issues. Debtor only budgets only $75.00 a month. Debtor has a son who is unemployed, living at home, and dependant on the Debtor not only for his needs, but his minor daughter. Debtor has not budgeted for that.

Debtor's plan requires her to make payments for two vehicles. One is a 2006 Land Rover, to repay a $12,000 debt. This vehicle is now 9 years old, and it is likely that the next extraordinary event explaining a default is that there has been a major vehicle expense. The Debtor is also choosing to pay for a 2009 Dodge Charger. While repeatedly defaulting in her Chapter 13 Plan, it is "necessary" for this Debtor to be paying for two cars.

The Debtor has not shown that yet another modification of a Chapter 13 Plan will result in a feasible plan that can be performed. While the Debtor may desire to have a plan, she has shown that she cannot perform the plan.

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

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

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

59. 12-30588-E-13 DIANE/OSVALDO MALDONADO
ET-6 Matthew Eason

CONTINUED MOTION TO APPROVE LOAN MODIFICATION
12-8-14 [108]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Diane and Osvaldo Maldonado ("Debtors") seeks court approval for Debtors to incur post-petition credit. Green Tree Servicing LLC (successor in interest to Bank of America, N.A.) ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $2,177.00 a month to $2,163.81 a month. The modification will have an interest rate of 4.625%, the principal amount owed is changed to $384,612.11, any arrearage will be cured, and the length of the loan changed from 30 years to 40 years.

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

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant motion on December 18, 2014. Dckt. 113.

The Trustee states that he has no objection to the terms of the loan modification. However, the Trustee is not certain if the loan modification agreement is being offered by the party who is the owner or holder of the existing note, and if it is not, the Trustee is not certain what authority the party offering the loan modification has to offer the loan modification.

The Trustee alleges that Proof of Claim No. 13 filed by Green Tree Servicing on September 19, 2012 for money loaned in the amount of $376,059.79 lists the creditor as Bank of America, N.A. and is signed by an attorney from Pite Duncan, LLP.

The Trustee is unsure whether Green Tree is the "lender" in a loan modification that appears to be owed to Bank of America, N.A.. There was a Notice of Transfer of Claim Other Than for Security filed on November 21, 2102 (dckt. 47) which transferred the claim, other than for security, from Bank of America, N.A. to Green Tree Servicing LLC. The Transfer provides no information on whether the underlying obligation of the loan transferred along with the deed of trust.

SUPPLEMENTAL DECLARATION OF TABIB HABIB

On December 31, 2014, Tabi Habib, Assistant Vice President of Bank of America, N.A. filed a supplemental declaration. Dckt. 116. In the declaration, Tabi Habib states that the original loan was executed by Debtors on March 25, 2010 with the principal amount of $388,900.00 made payable to Bank of America, N.A. The note is secured by a deed of trust encumbering the real property commonly known as 3560 Covello Cir., Cameron Park, California. On September 19, 2012, Bank of America, N.A. filed Proof of Claim No. 13-1 in Debtors' case.

Tabi Habib states that according to Bank of America, N.A. books and records, Bank of America, N.A. held possession of the Note and serviced the Loan from its origination to November 1, 2012, at which time it transferred possession of the Note and servicing rights for the Loan to Green Tree Servicing, LLC.

On October 12, 2012, Bank of America, N.A. sent a letter to the Debtors indicating the servicing of the Loan and right to collect payments under the Loan was assigned, sold, or transferred from Bank of America, N.A. to Green Tree Servicing, LLC effective November 1, 2012.

Tabi Habib states that as a result of the transfer of the servicing rights of the Loan and possession of the Note to Green Tree Servicing, LLC, Bank of America, N.A. no longer has any interest in the Loan.

Attached to the supplemental declaration is a copy of the October 12, 2012 letter sent to the Debtors. The letter, in relevant part states that:

1. "We are writing to inform you that your mortgage loan noted above will be transferred to a ***new servicer*** for the handling of ***all loan servicing needs*** such as billing, payment processing, and customer support."

2. Please be assured that this transfer does not affect any other terms or conditions of your mortgage loan***, only those terms related to the servicing of the loan***."

3. "For customers currently participating in or being considered for a loan modification program, we will transfer any supporting documentation you may have submitted to us to Green Tree Servicing, LLC.

4. If your loan was awaiting a decision regarding qualification of these programs, that decision will now be made by Green Tree Servicing, LLC."

5. "You are hereby notified that the ***servicing*** of your mortgage loan, that is, the right to collect payments from you, will be assigned, sold or transferred from Bank of America, N.A. to Green Tree Servicing LLC, effective November 1, 2012."

JANUARY 13, 2015 HEARING

At the January 13, 2015 hearing, the court continued the hearing to 3:00 p.m. on February 24, 2015. Dckt. 119. The court further ordered the following:

> **IT IS ORDERED** that a hearing shall be conducted on February 24, 2015 at 3:00 p.m. to consider evidence and arguments concerning whether Green Tree Servicing, LLC is a creditor, as defined in 11 U.S.C. § 101(10) and (5), in this bankruptcy case.
>
> **IT IS FURTHER ORDERED** that Green Tree Servicing, LLC shall,
>
> A. On or before February 3, 2015, file and serve on Debtors' counsel, Bank of America, N.A., the U.S. Trustee, and the Chapter 13 Trustee,
>
> 1. Copies of all documents by which Green Tree Servicing, LLC asserts that it has transferred or received any interests or rights in the obligation which is the basis for Proof of Claim No. 13 (a copy of which is attached to this Order as Addendum A).
>
> 2. Testimony provided by a person or persons with personal knowledge (Fed. R. Evid. 601, 602) to authenticate all documents produced, the transfer or transfers of any interests, who has been in possession of the promissory note upon which the obligation for Proof of Claim No. 13 is based, and the dates such person was in

possession, the dates possession was transferred.

3. If Green Tree Servicing, LLC asserts that it is the person entitled to enforce the Note as the holder of bearer paper, provide competent, admissible evidence of: (1) when it took possession of the specific note for this claim and its regular business practices for and with its clients (identifying the clients) when it takes possession of such Notes; (2) the clients from whom it has taken possession of such Notes; (3) how long Green Tree Servicing, LLC has or did retain possession of such Notes; and (4) where such Notes are stored and who, for Green Tree Servicing, LLC, is in possession of such Notes.

B. Appear (No Telephonic Appearances Permitted) at the February 24, 2015 hearing, with counsel of its choice, through a Senior Green Tree Servicing, LLC Managing Member with personal knowledge of Proof of Claim No. 13, the obligation upon which Proof of Claim No. 13 is based, whether Green Tree Servicing, LLC asserts any interest in the obligation upon which Proof of Claim No. 13 is based, and whether the obligation to be modified as requested by the Debtors and Green Tree Servicing, LLC is an obligation to which Green Tree Servicing, LLC is a party or asserts any legal or equitable interest in or rights thereto.

IT IS FURTHER ORDERED that Green Tree Servicing, LLC, and each of them, shall bring with it and produce in open court on February 24, 2015, the original documents of all copies which are filed in court pursuant to this Order.

IT IS FURTHER ORDERED that Bank of America, N.A. shall,

A. On or before February 3, 2015, file and serve on Debtors' counsel, Green Tree Servicing, LLC, the U.S. Trustee, and the Chapter 13 Trustee,

1. Copies of all documents by which Bank of America, N.A. asserts that it has transferred or received any interests or rights in the obligation which is the basis for Proof of Claim No. 13 (a copy of which is attached to this Order as Addendum A).

2. Testimony provided by a person or persons with personal knowledge (Fed. R. Evid. 601, 602) to authenticate all documents produced, the transfer or transfers of any interests, who has been in possession of

the promissory note upon which the obligation for Proof of Claim No. 13 is based, and the dates such person was in possession, the dates possession was transferred.

B. Appear (No Telephonic Appearances Permitted) at the February 24, 2015 hearing, with counsel of its choice, through a Senior Bank of America, N.A. Officer with personal knowledge of Proof of Claim No. 13, the obligation upon which Proof of Claim No. 13 is based, whether Green Tree Servicing, LLC asserts any interest in the obligation upon which Proof of Claim No. 13 is based, and whether the obligation to be modified as requested by the Debtors and Green Tree Servicing, LLC is an obligation to which Green Tree Servicing, LLC is a party or asserts any legal or equitable interest in or rights thereto.

IT IS FURTHER ORDERED that Bank of America, N.A., and each of them, shall bring with it and produce in open court on February 24, 2015, the original documents of all copies which are filed in court pursuant to this Order.

IT IS FURTHER ORDERED that on or before February 17, 2015, any reply or response shall be filed and served on Debtors' counsel, the U.S. Trustee, the Chapter 13 Trustee, Green Tree Servicing, LLC, and Bank of America, N.A.

GREEN TREE SERVICING LLC'S SUPPLEMENTAL RESPONSE

Green Tree Servicing LLC filed its supplemental response on February 3, 2015. Dckt. 125.

Green Tree Servicing LLC begins by reviewing the history of the note and deed of trust at issue. Green Tree states that Debtors executed the note on March 25, 2010 in the original principal amount of $388,900.00 in favor of Bank of America, N.A. as the lender. The note is secured by a deed of trust which was recorded against the Property, dated March 31, 2010. Bank of America, N.A. endorsed the note in blank and is identified as the lender on the deed of trust.

Green Tree states that the Debtors' loan was acquired from Bank of America, N.A. by FNMA with the servicing rights retained by Bank of America, N.A.. The loan was owned by FNMA as of November 1, 2012, when Green Tree purchased the servicing rights on the Debtors' loan from Bank of America, N.A. Green Tree states that effective November 1, 2012, the right to collect payments from the Debtors pursuant to the note and deed of trust was transferred to Green Tree. Green Tree does not provide this assignment but instead points to the declaration of David Schwartz, Vice President and Assistant General Counsel, who states that "according to the Business Records of Green Tree" the servicing rights were bought. Dckt. 130.

Green Tree alleges that the note is currently located at the facility of the Bank of New York Mellon in Dallas, Texas, where it has been held since Green Tree arguably acquired the servicing rights. The Bank of New York Mellon

serves as a document custodian with regard to the note on behalf of both FNMA and Green Tree. Once again, Green Tree points to the Schwartz Declaration as evidence but does not provide the agreement that shows that the Bank of New York Mellon is holding it for both parties.

On November 6, 2012, Green Tree states that Bank of America, N.A. assigned its interest in the deed of trust "together with the note and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust" to Green Tree pursuant to an Assignment of Deed of Trust. Dckt. 129, Exhibit 3.

Green Tree admits that FNMA is the owner of the Debtors' loan. Green Tree argues that, pursuant to a Limited Power of Attorney" between Green Tree and FNMA, FNMA appointed Green Tree as its "true and lawful attorney-in-fact, and in its name, place, and stead and for its use and benefits, to execute, endorse, and acknowledge all documents customarily and reasonably necessary and appropriate for," among other things, "4. The modification or extension of a mortgage or deed of trust." Dckt. 129, Exhibit 4.

Green Tree further argues that pursuant to the FNMA Servicing Guide, Green Tree has the authority to modify the loan. Specifically, Green Tree argues that the authorization is in the following excerpt from the Servicing Guide:

> [FNMA] temporarily gives the servicer possession of the mortgage note whenever the servicer, acting in its own name, represents the interest of [FNMA] in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings.
>
> This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of [FNMA]'s interest in the foreclosure, bankruptcy, probate, or other legal proceeding.
>
> When [FNMA] transfers possession, if the note if held by a document custodian on [FNMA]'s behalf, the custodian has possession of the note on behalf of the servicer so that the servicer has constructive possession of the note and the servicer shall be the holder of the note and is authorized and entitled to enforce the note in the name of the servicer for [FNMA]'s benefit.

Dckt. 129, Exhibit 5.

Additionally, Green Tree points to another section of the Servicing Guide which states " [t]he servicer is authorized to execute legal documents related to. . . mortgage loan modifications. . .for any mortgage loan for which it. . . is the owner of record." Dckt. 129, Exhibit 6.

In the instant bankruptcy, Debtors listed Bank of America, N.A. as the secured creditor on the Property in the amount of $377,039.00. Bank of America, N.A. filed a Proof of Claim on September 19, 2012. Green Tree states that on November 21, 2012, Green Tree filed a Notice of Transfer of Bank of America, N.A.'s claim to Green Tree. Dckt. 129, Exhibit 9.

Green Tree argues that based on the transfer of possession of the note and servicing rights to the loan from Bank of America, N.A. to Green Tree, Green tree is entitled to payment pursuant to California Commercial Code § 3104(b) which makes Green Tree a creditor and holder of a claim under 11 U.S.C. §§ 101(5) and (10). Green Tree provides cases outside of the Eastern District as persuasive authority finding that an entity acting as a servicer for FNMA is a creditor.

Green Tree concludes by arguing that Green Tree is contractually authorized by FNMA to modify the terms of the note and deed of trust pursuant to the Limited Power of Attorney and FNMA's Servicing Guide, as discussed supra.

BANK OF AMERICA, N.A.'S DECLARATION

On February 3, 2015, Bank of America, N.A. filed the declaration of Scott Horowitz, the Assistant Vice President of Operations of Bank of America, N.A. Dckt. 126.

Mr. Horowitz states that according the Bank of America, N.A.'s books and records, Bank of America, N.A. held possession of the Note and serviced the loan from its origination to on or around November 1, 2012 at which time it transferred possession of the note and servicing rights for the loan to Green Tree. Mr. Horowitz states that Bank of America, N.A.'s records reflect that the note was sent to Green Tree's document custodian.

On October 12, 2012, Bank of America, N.A. transmitted a letter to the Debtors indicating servicing of the loan and right to collect payments under the loan was assigned, sold, or transferred from Bank of America, N.A. to Green Tree effective November 1, 2012. Dckt. 127, Exhibit 1.

On November 20, 2012, an Assignment of Deed of Trust was recorded in the El Dorado County Recorder's office that reflects Bank of America, N.A. sold, assigned, conveyed all beneficial interest in the Deed of Trust and Note to Green Tree. Dckt. 127, Exhibit 2.

Mr. Horowitz states that in light of Bank of America, N.A.'s transfer of possession of the Note and servicing rights to Green Tree, Bank of America, N.A. is unaware of the current location of the Note, the current servicer of the loan, and makes no representation regarding what entity has standing to enter into the instant loan modification.

BANK OF AMERICA, N.A.'S RESPONSE

Bank of America, N.A. filed a supplemental response on February 17, 2015. Dckt. 133.

After rehashing the information testified to by Mr. Horowitz and Mr. Habib's declarations, Bank of America, N.A. argues that pursuant to 11 U.S.C. § 105(a) that the court should amend the order to appear and excuse its appearance as it transferred all of its interest in the loan over two years ago. In the alternative, Bank of America, N.A. requests that if the court does not amend the Order to allow Bank of America, N.A. to appear telephonically.

DISCUSSION

The Loan Modification Agreement is executed by Green Tree, in its own name and individual capacity (not as the agent for an identified principal). Exhibit, Dckt. 111. Proof of Claim No. 13, filed on September 19, 2012, asserts Bank of America, N.A. as the creditor for the claim to be modified.

In response to an opposition to the Motion filed by the Chapter 13 Trustee, Bank of America, N.A. filed a Declaration and Exhibits. Dckts. 116, 117. In the Declaration, an Assistant Vice President ("AVP") of Bank of America, N.A. stated under penalty of perjury:

A. He has personal knowledge of the records of Bank of America, N.A. relating to the claim. The AVP provides his testimony based on a review of the Bank of America, N.A. records.

B. On November 1, 2012, after filing Proof of Claim No. 13, Bank of America, N.A. "[t]ransferred possession of the Note and servicing rights for the Loan to Green Tree Servicing, LLC."

C. That Bank of America, N.A. sent a letter to the Debtors advising them that the servicing of the loan and the right to collect payments under the Loan were assigned, sold, or transferred from Bank of America, N.A. to Green Tree. The letter is provided as Exhibit 1.

D. Bank of America, N.A., as a result of transferring the servicing rights and possession to Green Tree, no longer has any interest in the "Loan."

Proof of Claim No. 13 filed by Bank of America, N.A. does not state that it is "merely" the servicer for the actual creditor, but states that Bank of America, N.A. is the creditor. 11 U.S.C. § 101(10), (5). Thus, the court was confused by the testimony under penalty of perjury that only the "possession" and "servicing" of the note had been transferred to Green Tree – without regard to Bank of America, N.A. having filed a Proof of Claim that it is the creditor to whom the debt is owed.

The letter sent by Bank of America, N.A. to the Debtors (Exhibit 1, Dckt. 117) merely states that Green Tree is the new servicer for the note. It expressly states that transfer of the servicing duties "does not affect any other terms or conditions of your mortgage loan..." The letter includes another document in which it is expressly stated that only the servicing is being transferred. No notice is provided that the creditor, stated to be Bank of America, N.A. in Proof of Claim No. 13, has changed.

Green Tree has also filed a response, with a number of supporting documents. Green Tree explains in its first response (Dckt. 125) that Green Tree is authorized to enter into the loan modification based on a Limited Power of Attorney given to it by Federal National Mortgage Association ("FNMA"). Pursuant to that Limited Power of Attorney, Green Tree can act in FNMA's name to negotiate and execute the loan modification. Response, pg. 2:14-18, Dckt. 125.

Green Tree further informs the court that while Bank of America, N.A. was the original lender, the note was transferred by Bank of America, N.A. to FNMA.

Though transferred, Bank of America, N.A. continued to serve as the servicer for FNMA for this note. The note is held by Bank of New York Mellon as the custodian for FNMA, and under some circumstance the holder for Green Tree.

Green Tree further informs the court that on November 6, 2012, Bank of America, N.A. assigned the "deed of trust, **together with the note and obligations therein described and the money due and to become due thereon with interest**" to Green Tree. A copy of this assignment of the note, along with the deed of trust, is provided as Exhibit 2 by Green Tree. Dckt. 127. Green Tree's summary is accurate, and the assignment executed by Bank of America, N.A. and recorded with El Dorado County, California, states that the note is assigned to Green Tree.

This assignment of the note is in clear conflict with the prior statements by Bank of America, N.A. that the servicing of the note was transferred and Green Tree's statements that the note was transferred to FNMA. A lender like Bank of America, N.A. selling consumer residential loans to FNMA is not unusual or unexpected. Bank of America, N.A. stating that it was assigning a note to a loan servicer, when it appears that the note was actually transferred or assigned to FNMA is surprising.

A second declaration from another Assistant Vice President for Bank of America, N.A., Scott Horowitz, is filed with Green Tree's response. Dckt. 126. Mr. Horowitz testifies under penalty of perjury that the servicing of the loan and the right to collect payments were transferred from Bank of America, N.A. to Green Tree. He goes further to testify that the Assignment of the Deed of Trust "reflects" that not only the deed of trust was assigned, but that it also "sold, assigned, and conveyed all beneficial interest in the Deed of Trust and Note to Green Tree."

This testimony conflicts with the response by Green Tree that the note was transferred to FNMA, not Green Tree, with Green Tree deriving its authority to act pursuant to the Limited Power of Attorney given to it by FNMA. If the note were actually "sold, assigned, and conveyed" by Bank of America, N.A. to Green Tree, then Green Tree would have no need for a Limited Power of Attorney to enforce rights under a note it already owned.

Green Tree provides a copy of the Limited Power of Attorney as Exhibit 4, Dckt. 129. The Limited Power of Attorney is given by FNMA and authorizes Green Tree to, in the name of FNMA, execute, endorse, and acknowledge documents for FNMA as necessary and appropriate to exercise the powers granted in the Limited Power of Attorney. These specified acts include, the modification or extension of a mortgage or deed of trust.

This contention that the FNMA Limited Power of Attorney allows Green Tree to enter into loan modification in its own name and present agreement to the court as part of a request for an order (the exercise of federal judicial power), raises two issues. First, Green Tree purports to be acting in its own name and stead, not in the name and stead of FNMA. Second, Green Tree is authorized to execute modifications of mortgages and deeds of trust (the security documents), not the note. A contention that the reference to "mortgages and deeds of trust" is used by FNMA not in the Commercial Code sense but in a general, "mortgage, deed of trust, note, contract, loan agreement, and any other document relating to the debt" sense is not consistent with the Limited Power of Attorney. In Paragraph 8 of the Limited Power of Attorney,

FNMA expressly makes reference to, and distinguishes mortgages, deeds of trust, and notes in specifying the scope of the Limited Power of Attorney for certain acts. FNMA in the Limited Power of Attorney itself, distinguishes between the security documents and the note.

Green Tree has also provided the court with copies of the FNMA Servicing Guide, which supplements the Limited Power of Attorney and the Custodial Agreement as to its custodians, such as Bank of New York Mellon is asserted to be for the note at issue. Under these Guides, there is asserted a springing transfer of possession by which Bank of New York Mellon ceases holding the note for FNMA and automatically holds it for Green Tree. No notice is required, with the springing transfer occurring automatically upon Green Tree filing documents or commencing proceedings in its own name concerning the note and deed of trust. The Bank of New York Mellon then continues to hold the Note only for Green Tree, and no longer for FNMA, for as long as the judicial proceeding is pending. Exhibits 5 and 6, Dckt. 129. (Green Tree has provided the court with complete copies of the FNMA Servicing Guide and the FNMA standard custodial agreement in connection with another bankruptcy case.) While the court may question the wisdom of a secret, springing transfer of possession by a custodian and the impact on the parties during the pendency of the judicial proceeding, at this juncture such a showing has been sufficient for the court to rely on such representations and evidence.

It appears that while the how and why Green Tree is entering into a loan modification in its own name with these Debtors has been addressed (as the holder, through a custodian, of a note endorsed in blank), there is a significant disconnect with the statements made by Bank of America, N.A. in the recorded Assignment of the Deed of Trust and its supporting declarations that it has sold and assigned the note to Green Tree, and the Green Tree response and FNMA Limited Power of Attorney showing that it was transferred to FNMA, not Green Tree.

At the hearing, xxxx

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 Diane and Osvaldo Maldonado having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion is granted and Diane and Osvaldo Maldonado are authorized to enter into a loan modification agreement with Green Tree Servicing, LLC on the terms and conditions set forth in the Loan Modification Agreement filed as Exhibit 1 in support of the Motion. Dckt. 111. Green Tree Servicing, LLC has presented the court with evidence that it is, and shall continue to be during the proceedings relating to this Motion and any claim (Proof of Claim No. 13 being asserted by Green Tree Servicing, LLC, Assignment of Claim, Dckt. 47), adversary proceeding, or

contested matter, in possession of the note being modified and is exercising the rights of a holder of a negotiable instrument endorsed in blank.

60. 14-31188-E-13 KATHIE SINKFIELD - WILLIS **STATUS CONFERENCE RE: ORDER CONFIRMING PLAN**
Brian Turner **1-27-15 [35]**

Debtor's Atty: Gary Ray Fraley

Notes:

Set by order of the court dated 2/4/15 [Dckt 40] to determine whether the Order Confirming Plan (Dckt. 39) was entered in error.

61. 14-31188-E-13 KATHIE SINKFIELD - WILLIS **STATUS CONFERENCE RE: OBJECTION**
GAR-1 **Brian Turner** **TO CONFIRMATION OF PLAN BY NATIONSTAR MORTGAGE, LLC**
12-18-14 [20]

Debtor's Atty: Gary Ray Fraley
Creditor's Atty: Gail A. Rinaldi

Kathie Sinkfield-Willis ("Debtor") filed the current Chapter 13 bankruptcy case (No. 14-31188) on November 13, 2014. On November 13, 2014, the Debtor filed a proposed plan. Dckt. 5.

On December 18, 2014, Nationstar Mortgage, LLC filed an Objection to Confirmation set for hearing at 3:00 p.m. on January 27, 2015. Dckt. 20. The Proof of Service for the Objection to Confirmation states that Nationstar Mortgage, LLC served the following parties on December 18, 2014:

1. David Cusick via E-Filing
2. U.S. Trustee via E-Filing
3. Debtor's Counsel via E-Filing
4. Debtor via First-Class Mail

Dckt. 20 and 21. The Proofs of Service for both the Objection to Confirmation and the Notice of Objection to Confirmation state that Gail Rinaldi "hereby certif[ies] that a true and correct copy of the [Objection to Confirmation and Notice of Objection to Confirmation] was served on the following parties by electronic service via Court's ECF filing system or by first-class mail on December 18, 2014." Dckt. 20 and 21.

Service by electronic means is governed by Local Bankr. R. 7005-1, which states:

"(a) Consent to Service by Electronic Means. A registered user of the Court's electronic filing system may consent to receive service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E), as made applicable to bankruptcy cases and proceedings by Fed. R. Bankr. P. 7005, by so indicating on his/her online electronic Filing System Registration Form and User Agreement...

(d) Method of Service

(1) Upon Those Parties consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first text line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served. . ."

At the hearing on January 27, 2014, attorney for Nationstar Mortgage, LLC, Gail Rinaldi, appeared by phone and attorney for the Chapter 13 Trustee, Talvinder Bambhra, appeared in person. Debtor and Debtor's counsel, Gary Ray Fraley, were not present at the hearing. The court sustained the Objection, finding that the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), and did not confirm the Plan. Dckt. 37 and 39.

However, also on January 27, 2015, the court signed a proposed Order Confirming the Plan, endorsed by the Chapter 13 Trustee, pursuant to 11 U.S.C. § 1325. Dckt. 35.

In light of the Objection to Confirmation being sustained (Dckt. 39) and an Order Confirming Plan being signed (Dckt. 35), the court ordered a status conference to be held at 3:00 p.m. on February 24, 2015, to determine the status of the case. The parties shall address at the hearing:

(1) whether Nationstar Mortgage, LLC provided proper service, pursuant to Local Bankr. R. 7005-1;

(2) why Debtor and Debtor's Counsel were not present at the hearing on the Objection to Confirmation;

(3) whether the Order Confirming Plan (Dckt. 39) was entered in error; and

(4) whether the order sustaining Nationstar Mortgage, LLC's Objection to confirmation was entered in error.

62. 11-22889-E-13 MARIA PIERCE **MOTION TO INCUR DEBT**
WSS-2 Steven Shumway **1-27-15 [46]**

Tentative Ruling: The Motion to Incur Debt 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 27, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is granted.

The motion seeks permission to obtain a reverse mortgage on Maria Pierce's ("Debtor") residence commonly known as 9192 Ivy League Circle, Orangevale, California.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on February 5, 2015.

However, the Motion fails to state with particularity as required by Fed. R. Bankr. P. 9013.

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

A. Debtor's confirmed plan provides a 100% dividend on all allowed claims.

B. Debtor's confirmed chapter 13 plan provided that, when eligible, Debtor would obtain a reverse mortgage on her personal residence and part of the proceeds of that reverse mortgage would be used to fund the balance of Debtor's plan.

C. Debtor is now eligible to obtain a reverse mortgage

D. Debtor has obtained a commitment for a reverse mortgage. An estimate of the amount needed to fund the balance of Debtor's plan has been obtained from the Chapter 13 Trustee and the trustee will be the disbursing agent fro these funds.

E. A copy of the estimated closing statement is included as an exhibit to the declaration of Maria Pierce submitted in support of this motion

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 generalities that a commitment for a reverse mortgage has been received but provides no information as to who the reverse mortgage is with nor any of the pertinent facts of the reverse mortgage. Instead, the Debtor points to the exhibits for the court to discern the terms and determine the reasonableness. Looking at the exhibits, the proposed terms appears to be missing necessary information, such as the name of the other parties. This is not sufficient.

DISCUSSION:

The pleading titled "Motion" is nothing more than a couple of conclusions and request that the court grant some non-specific relief. To the extent that Movant wants to argue that the court could find the information since it makes reference to an exhibit, the court does advocate for any party before it. Outsourcing the attorney's work to the court for the law clerk or judge to assemble the allegations, organize the evidence, and present the grounds and evidence is improper.

The Debtor's declaration is states nothing more than, "give me a reverse mortgage." Based on her limited testimony in the declaration, the court questions whether the Debtor understands what a "reverse mortgage is," has any good reasons for obtaining a reverse mortgage, and has been advised of the costs and expenses for such a reverse mortgage. Declaration, Dckt. 48.

Debtor filed a Supplemental Declaration stating that the original documents (which she testified were accurate) were incomplete and inaccurate. Dckt. 51.

On the original and corrected exhibits, the borrower is identified as "The Pierce Family Trust." The Debtor cannot state in her motion or declaration how much money she (or The Pierce Family Trust) is obtaining from the reverse mortgage or where it will be spent. From the exhibits, it appears that there is a $400,000.00 loan, from which there are to be $28,189.18 in settlement charges to be paid to some person. (7% of the gross loan amount). It appears that the bulk of these "charges" are "Required Payment to Unsecured Liens/Trustee Fees" in the amount of $26,725.18. The court is unsure what

"unsecured liens" (or what an unsecured lien is) or "Trustee Fees" would be paid outside of the bankruptcy plan.

The court has no idea of the terms of this loan. See Fed. R. Bankr. P. 4001(c) requiring that a copy of the loan agreement (or, as this court allows in some limited circumstances, at least the term sheet with all relevant terms) be filed with the court. On Schedule A the Debtor lists only one piece of real property, stating that it has a value of $360,000.00. If this is the property for which the reverse mortgage is being obtained, then effectively the Debtor is selling the property, exhausting all of the value with this loan (for which no terms are provided to the court).

However, the motion does tip off the court that the confirmed Plan provides that the Debtor will fund it with a lump sum payoff from a reverse mortgage. It appears that the Chapter 13 Trustee is "sufficiently in the loop" that he does not oppose the motion, notwithstanding the lack of specificity or request that the monies be disbursed directly from escrow to the Trustee. FN.1.

FN.1. The court leaves it to Debtor and Debtor's counsel to consider the wisdom of effectively selling real property through a reverse mortgage, as well as how this Debtor, who has no other significant assets listed on Schedules A and B, and only has monthly Social Security income of $1,786.00, will protect such lump sum of cash and provide for her needs in the future.

The court grants the Motion, without authorizing any specific terms and conditions – on the condition that the Trustee be paid sufficient monies for fully funding the plan directly from escrow.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Maria Pierce ("Debtor") is authorized to obtain a Reverse Mortgage, secured by the property commonly known as 9191 Ivy League Circle, Orangevale, California. The Debtor not having presented the court with any terms and conditions for such Reverse Mortgage, the court does not approve any specific terms for such credit.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 Trustee, David Cusick, shall be disbursed directly from the Reverse Mortgage escrow sufficient monies to fully fund the Chapter 13 Plan in one lum sum. The Escrow shall disburse to the Chapter 13 Trustee the amount stated in the Trustee's demand in escrow, and any disagreement between the Trustee and any other persons concerning such amount shall be determined by this court in a subsequent proceeding.

63. 11-45993-E-13 ROBERT/EDITH MORTENSON MOTION TO MODIFY PLAN
CAH-6 Oliver Greene 1-9-15 [72]

Final Ruling: No appearance at the February 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 creditors. David Cusick, the Chapter 13 Trustee, filed a non-opposition on February 5, 2015. 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 January 9, 2015 is confirmed.

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

64. 14-31793-E-13 DPC-1 LAURA ESPINOZA DE JAIMES Michael Benavides OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 1-22-15 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 22, 2015. By the court's calculation, 33 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 the Debtor's Chapter 13 documents are incomplete as follows:

a. Section 1.03 is blank. The Debtor failed to provide the duration of the plan payments.

b. The Debtor's Chapter 13 Plan (Dckt. 11) is not properly signed by the Debtor and the Debtor's attorney. There is no scanned copy of a signature or the appropriate electronic signature under Local Bankr. R. 9004-1(c)(1). Pursuant to the local rule the Trustee requests the Debtor's attorney produce the original document for review.

c. The Debtor failed to list US Bank on either Schedule B or C. The Trustee received copies of bank statements from the Debtor which included statements from US Bank.

d. The Debtor failed to file the attached statement required as to any net income reported on line 8a on Schedule I, the $1,500.00 net income from rental property or a business. Dckt. 12, pg. 15.

e. The Statement of Financial Affairs is incomplete. Debtor lists income in question 1 from self-employment income but failed to complete questions 18-25.

f. The Debtor failed to file the Rights and Responsibilities document with the court where the plan asks that the attorney be awarded the "no-look" fee - which will not be awarded as a "no-look" fee without the document.

On February 16, 2015, the Debtor filed Amended Schedules B, C, I, and J as well as amended Statement of Financial Affairs and Rights and Responsibilities. Dckt. 27, 28, 29, & 30. The amended Schedules, Statement of Financial Affairs, and Rights and Responsibilities all address the Trustee's objections, correcting the information, and therefore the objections are overruled.

As to the Trustee's first two objections, the Trustee's objections are well taken. The proposed plan does not provide the duration of the plan payments nor is the proposed plan properly signed. Without the information concerning the length of the plan nor the signatures of the Debtor and Debtor's counsel to confirm that the proposed plan has been reviewed, the court cannot confirm the plan.

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

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

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

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

65. 14-31993-E-13 DAVID/ROWENA ABBOTT
DPC-1 Scott Johnson
OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
1-22-15 [25]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 22, 2015. By the court's calculation, 33 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 the Plan relies on the pending Motion to Value Collateral of Sterling Jewelers which is set for hearing on February 3, 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 also be denied confirmation. 11 U.S.C. § 1325(a)(6).

The Trustee's objections are well-taken. The court at the February 3, 2015 hearing on the Motion to Value Collateral of Sterling Jewelers denied the motion for failing to plead with particularity as required by Fed. R. Bankr. P. 9013. Dckt. 31. Without the collateral being valued, the proposed 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 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.

66. 14-32494-E-13 NICOLE AYRES **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**
Mikalah Liviakis **2-4-15 [20]**

Final Ruling: No appearance at the February 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Nicole Ayres ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 4, 2015. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case ($79.00 due on January 30, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

67. 09-40399-E-13 ALEX/SHATASHA GRANT **MOTION TO APPROVE LOAN**
TJW-4 Timothy Walsh **MODIFICATION**
2-10-15 [70]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Alex and Shatasha Grant ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2006-NC2, Asset Backed Pass Through Certificates Series 2006-NC2 ("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 $1,906.66 a month to $1,431.26 a month. FN.1. The modification will reduce the principal in the amount of $42,114.13 each year on the anniversary of the first trial period

payment, for a total period of three years. The post modification term will be 444 months. The interest rate will be reduced from 5.000% to 4.750%.

FN.1. The Motion states that the "Creditor" is America's Servicing Company. However, on the attached loan modification agreement deed of trust, the "Lender" is listed as U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2006-NC2, Asset Backed Pass Through Certificates Series 2006-NC2. Dckt. 73, Exhibit 2. The Debtor appears to have misstated the loan servicer as the lender based on the fact the servicer sent a letter of the acceptance of the loan modification. Dckt. 73, Exhibit 1. Seeing that the Home Affordable Modification Agreement Deed of Trust states the Creditor as the Lender and that the Creditor signed the Home Affordable Modification Agreement, the Creditor is the actual lender and therefore party in interest for the loan modification, not America's Servicing Company.

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

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted. FN.1.

FN.1. The Motion filed by Debtor is a challenge to read. It does not contain any paragraph numbering or headings. All the text is flushed to the left margin, with no tabs or intents provided. For all intents and purposes it is presented as black letters in a series of sentences on white paper. While a motion is not won or lost on style, counsel's challenging presentation of pleadings devoid of any line, and paragraph structure does not an effective presentation of good arguments and evidence make.

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 Alex and Shatasha Grant 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 Alex and Shatasha Grant ("Debtor") to amend the terms of the loan with U.S. Bank National Association, as Trustee for Citigroup Mortgage Loan Trust, Inc. 2006-NC2, Asset Backed Pass Through Certificates Series 2006-NC2, which is secured by the real property commonly known as 1816 Fairfield Ave., Fairfield, California, on such terms as stated in the Modification

Agreement filed as Exhibit 2 in support of the Motion, Dckt. 73.