UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 3, 2015 at 3:00 p.m.

1.	**11-41634-E-13**	**EXCELL/JACQUELINE**	**MOTION TO SELL**
	PGM-8	**ROBINSON**	**2-3-15 [143]**
		Peter Macaluso	

Tentative Ruling: The Motion to Sell Property 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 February 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is denied.

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

A. 7908 Cresentdale Wale, Sacramento, California

The proposed purchaser of the Property is Deshaun Price and the terms of the sale are:

1. The Property has a pending offer of $207,000.00

2. Initial deposit of $1,000.00.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed a limited objection to the instant Motion on February 13, 2015. Dckt. 148. The Trustee states that he has no objection to the proposed Motion to Sell provided the sale will occur as proposed.

The Debtors' scheduled the Second Deed of Trust, Specialized Loan Servicing to be paid through the plan. Dckt. 108, pg. 3, § 3.11. A claim was filed by Heritage Credit Union on September 22, 2011, in the amount of $40,580.66 (Proof of Claim no. 2). An Order Valuing was granted on December 19, 20111 on said loan. Dckt. 80. A letter from Heritage Credit Union dated January 25, 2015 stated they have agreed to allow the short sale of the Property in the amount of $6,000.00. Dckt. 146, pg 28.

A letter from Ozell Smith, employee of Elite Realty Services, and filed with the court on February 3, 2015, states that the conversation from Ocwen to approve short sale did not include payoff of Heritage and therefore they would not redo the paperwork or pay Heritage any money. The letter goes on to say the Debtors wish to pay the second mortgage holder directly. Dckt. 146, pg 29.

The Discount Payoff Agreement from Ocwen dated January 13, 2015 (Dckt. 146, pg. 23) states the maximum amount to a second deed of trust lienholder is $0.00.

DEBTORS' RESPONSE

The Debtors filed a response on January 24, 2015. Dckt. 151. The Debtors state that the second deed of trust on the Property will be paid by the buyer in the transaction, not the Debtors. The Debtors state that line 1312 of the HUD-1 Settlement Statement shows the $6,000.00 payoff to Heritage Credit Union for the second deed of trust, paid from borrower's funds.

DISCUSSION

The court begins with the Motion filed by Debtor and terms as represented to the court. The Motion is very simple and states the following:

A. The property has a pending offer of $207,000.00.

B. Debtor will not receive any proceeds of the sale.

C. The short sale approval letter from Ocwen "appears" to provide for no payment to the holder of the claim secured by the second deed of trust, which is identified as Heritage Community Credit Union.

D. Exhibit E is a letter from Debtor's realtor explaining the negotiations to provide for paying off the second deed of trust through escrow. (No declaration of the realtor is provided).

Motion, Dckt. 143.

Debtor provides a Declaration in support of the Motion. Dckt. 145. In that Declaration Debtor states:

A. Debtor wishes to conduct a short sale.

B. The HUD-1 Settlement Statement, Purchase Contract, and Approval Letters are true and correct copies.

Debtor identifies Exhibit C as the Ocwen short sale acceptance letter. Dckt. 146 at 23-27. The acceptance letter includes the following relevant to this discussion:

A. The Creditor has approved a discounted payoff of $191,637.67.

B. The discounted payoff offer expires on February 27, 2015.

C. The maximum payment to the holder of a 2nd (junior) lien is $0.00.

D. The maximum payment to the holder of a 3rd (junior) lien is $0.00.

Exhibit D is a letter on Heritage Community Credit Union letterhead. *Id.* at 28. It states that Heritage will accept a payment of $6,000.00 through the sale escrow. Heritage will not release its lien unless it is paid $6,000.00 through the sale escrow.

Exhibit E is identified as a letter from Debtor's real estate broker. *Id.* at 29. The letter is not addressed to any person and appears to be a statement made not under penalty of perjury in lieu of (or to avoid having to) testify under penalty of perjury. The letter states that Ocwen has stated that the short sale agreement does not provide for the payment of a junior lien holder. FN.1.

FN.1. The broker's letter, not under penalty of perjury, that "we" did not know about the junior lien when contacting Ocwen about the short sale. This bankruptcy case was filed on September 6, 2011. On Schedule D filed by Debtor on September 6, 2011, Debtor states under penalty of perjury that Heritage Community Credit Union has a claim secured by a "2nd dot." Dckt. 1 at 25. To the extent that the "we" referenced in the statement not under penalty of perjury means Debtor and Debtor's attorney, then it is false. If it references just the real estate broker, no explanation or testimony is provided as to why Debtor withheld that information from the broker.

The Purchase Agreement, with Addendum, appears to state that the sales price is $207,000.00. *Id.* at 6-22. The terms in the Addendum are handwritten in large letters, stating:

(1) Purchase Price To Be $207,000

(Two Hundred Seven Thousand Dollars)

It appears that while Debtor requests that the court approve a sale for $207,000.00, the Purchase and Sale Agreement does not correctly state the sales price. The Motion does not accurately state the sales price. At the time the Motion was filed a side agreement appears to have been entered into to increase the sales price to $213,000.00, with the buyer paying an additional $6,000.00 for the purchase of the property. The Motion does not "mention" the additional $6,000.00 to be paid by the purchaser. The Declaration provided by Debtor under penalty of perjury fails to disclose the additional $6,000.00 to be paid by the purchaser. The Motion makes a vague reference to the "letter" provided by the broker (which is not testimony under penalty of perjury "which allows the buyer to pay off the second deed of trust through escrow." No explanation is provided as to how the broker "allows" the purchaser to pay a higher price then approved by the court.

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

Based on the evidence before the court, the failure of Debtor to accurate state the sales price in the Motion and failure to provide testimony concerning the "extra" $6,000.00 to be paid by the purchaser, the court denies 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 Sell Property filed by Excell and Jacqueline Robinson, the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to authorize Debtor to sell the Property commonly known as 7908 Cresentdale Wale, Sacramento, California ("Property") is denied.

2. 10-25465-E-13 LUCLLE/ALEXANDER CARIGMA MOTION TO MODIFY PLAN
SS-8 Scott Shumaker 1-27-15 [143]

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 27, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

Lucile and Alexander Carigma ("Debtors") filed the instant Motion to Confirm the Modified Plan on January 27, 2015. Dckt. 143.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on February 17, 2015. Dckt. 151. The Trustee responds as follows:

It appears that the Plan passes the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Trustee believes the Debtors' non-exempt equity totals $100,000.00 and the Debtors propose to pay the unsecured creditors no less than a 30 percent dividend.

The Trustee's records show no non-exempt equity if the exemptions are construed liberally in favor of the Debtor.

Debtors' plan, section 6.01, reflects Debtors' have checked the option

that the New York Life insurance policy shall "not revest in Debtor until such time as a discharge is granted." Debtor appears to have received $100,000.00 in proceeds on this policy and such appreciation in estate property accrues normally for the benefit of the estate.

The supporting motion states that "Debtor Alexander received these funds in February 2014 and utilized these funds, in part, to fund his ongoing Chapter 13 Plan payments, pay ongoing bills, and pay for Lucille's funeral and related expenses." Dckt. 143, pg. 2, lines 5-8.

According to the Trustee's records, unsecured creditors have filed proof of claims totaling an amount of $323,220.26. To date, the Trustee has disbursed an amount of $90,111.47, $11,015.24 fund are on hand, and one additional payment of $1,887.00 will come due. Disbursements are only being made to unsecured claims at this point.

The Trustee concludes by noting that the Trustee had raised previous issues in opposition to a motion to substitute (Dckt. 110) but the Trustee has not appealed the ruling on that motion and believes bound by the ruling. The Trustee does not oppose the motion.

DISCUSSION

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

While the Trustee has noted concerns on the substitution, the Trustee does not oppose the instant plan.

However, the court has reviewed the Civil Minutes from the hearing on the Motion to Determine the Feasibility of Further Administration of the Case following the Death of one of the Debtors. Civil Minutes, Dckt. 122. The Minutes reflect that the court concluded that the case could properly continue based on the following:

> "The Motion is granted and Administration of the Chapter 13 Case shall continue in this court. The Debtors, with Alexis Carigma acting as the personal representative of the late Lucille Carigma, assert that the case should continue notwithstanding the death of Lucille Carigma. In addition to the income previously disclosed, there is $100,000 of insurance proceeds which will be used to complete the plan and provide for a 100% dividend to creditors holding general unsecured claims.

There are approximately only six months left to be performed under the plan.

> Based on the evidence submitted, the court orders that the Chapter 13 case proceed for both debtors."

Civil Minutes, Dckt. 122. These minutes are consistent with the grounds stated in the Motion seeking such relief,

> "Because the filed claims in this case came in lower than Debtors had originally estimated, Debtors' Plan will now pay 100% of the filed and allowed claims of general, unsecured creditors. See Declarations of Alexander and Alexis Carigma."

Motion, Dckt. 81.

Alexis Carigma, who has been substituted in as the representative for the deceased Debtor stated under penalty of perjury in his declaration:

> "5. It is further my understanding that because my father received life insurance proceeds, from which a balance remains, the Plan will now repay 100% of the filed and approved claims of general, unsecured creditors. Accordingly, no creditors will be prejudiced by continued administration of this."

Declaration, Dckt. 83.

The surviving Debtor, Alexander Carigma, also stated under penalty of perjury in his declaration:

> "Furthermore, upon my wife's deahth [sic.], I received $100,000.00 in life insurance proceeds. To the extent that my income might be insufficient to complete plan payments, I will use some of the remaining life insurance funds (of which approximately $40,000.00 still remains) to fund the Plan. Because the filed claims in this case came in lower than my wife and I had originally estimated, the Plan will now pay off 100% of the filed and allowed claims of general, unsecured creditors."

Declaration, Dckt. 84.

Notwithstanding inducing the court to allow the administration of the case to continue based on a 100% dividend to creditors holding general unsecured claims, the surviving Debtor provides for only a 30% dividend in the Modified Plan. This plan is contrary to the representations made to, and relied upon by the court, in concluding that this case could properly continued to be administered notwithstanding the death of one of the Debtors. Now, the Debtors, and counsel, have proposed a plan directly contrary to the prior representations in the pleadings (subject to Fed. R. Bank. P. 9011) and testimony made under penalty of perjury.

The Debtor and representative of the deceased Debtor are not proposing and prosecuting this case in good faith. In effect, they have affirmatively misrepresented facts to the court as part of what appears to be a scheme to divert $100,000.00 from the estate.

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

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

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

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

IT IS ORDERED that the Motion is denied, and Debtor's First Modified Chapter 13 Plan filed on January 27, 2015 is not confirmed.

3. 10-46406-E-13 CORINA GARCIA — MOTION TO USE CASH COLLATERAL
PGM-2 Peter Macaluso — 1-29-15 [50]

Tentative Ruling: The Motion to Use Cash Collateral 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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Use Cash Collateral 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 Use Cash Collateral is granted.

Corina Garcia ("Debtor") field the instant Motion to Use Cash Collateral on January 29, 2015. Dckt. 50. The Debtor is seeking the court's authorization pursuant to 11 U.S.C. § 363 to use cash collateral to purchase a replacement vehicle.

Debtor listed a 2003 Acura MDX ("Vehicle") on Schedule B and continued to be in possession of the Vehicle until August 9, 2014. Pacific Credit Union has an allowed secured claim in the amount of $10,000.00 which is secured by the Vehicle. The balance on said allowed secured claim remains in the amount of $0.00.

On August 9. 2014, the Vehicle was damaged in a collision that requires that it either be repaired or replaced. The Debtor alleges that value of the repair exceeds the value of the Vehicle and is determined to be totaled. The insurance company is prepared to settle the claim on the Vehicle for the sum of $8,770.64, which constitutes cash collateral. The insurance company has paid this amount to Pacific Credit Union who has forwarded it to the Chapter 13 Trustee.

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

11 U.S.C. § 363 provides the following in relevant part:

> (b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--
>
> > (A) such sale or such lease is consistent with such policy; or
> >
> > (B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--
> >
> > > (I) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and
> > >
> > > (ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

A review of the Debtor's Schedule B shows two vehicles listed: (1) the Vehicle and (2) 1997 Mitsubishi Galant in poor condition. It appears to the court that the Debtor is in need of a replacement vehicle given the totaling of the Vehicle and the poor condition of the other. Furthermore, it appears that Pacific Service Credit Union has been paid their full secured amount of $10,000.00 through the plan as valued. Dckt. 29

With good cause shown, the court authorizes the Debtor to use the cash collateral to purchase a new vehicle. The Trustee, having the insurance proceeds, shall hold the insurance funds in the amount of $8,770.64 with any

and all liens remaining attached to said funds. The Debtor shall, on 10 days notice, file a Motion for Disbursement of the insurance proceeds, providing evidence of the proposed purchase of the vehicle.

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 Use of Cash Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the Debtor Corina Garcia is authorized to use the $8,770.64 insurance proceeds to procure a replacement vehicle.
>
> **IT IS FURTHER ORDERED** that the Trustee shall retain the $8,770.64 insurance proceeds with any and all liens remaining attached to said proceeds until further order of the court.
>
> **IT IS FURTHER ORDERED** that the Debtor shall file and serve on ten (10) days notice a Motion for Disbursement for the disbursement of the insurance proceeds to purchase a replacement vehicle, providing evidence and the terms of the proposed purchase of a replacement vehicle.

4. 12-41107-E-13 RENE'/SUSAN GARCIA — MOTION TO MODIFY PLAN
DEF-5 David Foyil — 1-16-15 [93]

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, 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.

Rene and Susan Garcia ("Debtors") filed the instant Motion to Confirm the Modified Plan. Dckt. 93.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 17, 2015. Dckt. 104. The Trustee objects on the ground that the month paid in stated in the Debtor's proposed plan payments differ from the Trustee's records. The plan payments in the proposed plan in the additional provisions states: "As of November 11, 2014 (months 1 through 24), the debtor has paid the trustee $12,461.92. The Chapter 13 plan payment for months 25 through 60 shall be $100."

According to the Trustee's records, Debtor has paid in $13,241.00 through month 25, which is January 2015 where this case was filed on December 7, 2012 so the first payment was due on January 25, 2013.

The Trustee states that he has no objection to proposed modified plan if that is corrected in the order confirming.

DISCUSSION

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

The Trustee's objection is well-taken. However, this is merely a scrivener's error which could easily be corrected in the order confirming to reflect that the amount paid into the plan thus far is "$13,241.00."

Without further objection and after the order confirming the plan reflects the actual amount paid into the plan through month 25, 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 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan and correcting the amount paid into the plan through month 25 to $13,241.00, 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.

5. 14-29407-E-13 VINCENT GONZALES
GG-2 Gerald Glazer

MOTION TO DETERMINE THAT CASE MAY PROCEED PURSUANT TO FRBP SECTION 1016
1-20-15 [45]

Tentative Ruling: The Motion For Determination of Continued Administration of the Chapter 13 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).

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 Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 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 Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 is denied.

Desiree Gonzales, personal representative of the Debtor, filed the instant Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 on January 20, 2015. Dckt. 45.

Ms. Gonzales states that on November 20, 2014, Judge Timothy Fall of the Yolo County Superior Court ordered that Ms. Gonzales is appointed special administrator to be the representative of the decedent and his estate in the

bankruptcy proceedings.

On December 21, 2014, the court ordered that the Debtor's personal representative, Ms. Gonzales, is successor in interest for this matter pursuant to Fed. R. Civ. P. 25 and Fed. R. Bankr. P. 7025. Dckt. 35.

Ms. Gonzales states that some of Debtor's children are residing at Debtor's residence and were doing so prior to Debtor's death. Yahnee Gonzales has been residing at the residence and is making the mortgage payment and helping with the upkeep. Ms. Gonzales is contributing $125.00 per month to make the plan payment. Schedule I and J have been amended to reflect the current financial status of the estate. Dckt. 48, Exhibit A.

Ms. Gonzales argues that due to the homestead exemption passing to Debtor's daughter, and the death benefits from retirement plans being exempt, the current pending plan is an efficient way to administer Debtor's estate. Debtor's estate has income to fund the plan and Debtor's daughter and administrator of his estate is willing to pay the monthly plan payments.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on February 17, 2015. Dckt. 53. The Trustee states that:

1. Four out of six scheduled unsecured creditors have filed claims,

2. The secured claimant to be paid directly has filed a claim showing no arrears;

3. The state court appears aware of the proceedings;

4. The plan payments are of modest amount ($125.00 per month); and

5. The representative of the Debtor could provide for an automatic deduction for the plan payment.

DEBTOR'S REPLY

The Debtor filed a reply on February 24, 2015. Dckt. 56. The Debtor's representative states that she is willing to provide for an automatic deduction of the plan payment. Debtor's representative reiterates that the homestead exemption passes down to Debtor's daughter. Furthermore, the Debtor's representative argues that the case can be prosecuted in good faith because the plan payments can me met and the estate is generating enough income to meet all of its expenses as well as the plan payments.

The current plan is an efficient way to administer Debtor's estate and creditors are treated appropriately, fairly, and quickly, as they would be in probate.

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*.

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.

Movant has provided the court with no points and authorities or any legal argument as to why the Motion should be granted. In the Motion Movant did cite to several cases and to a California Code of Civil Procedure section for the proposition that a homestead exemption passes to the Debtor's (unidentified daughter). Movant argues that the Debtor's daughter intends to fund the Chapter 13 Plan.

Review of Rule 1016

The court begins with the plain language on the Rule, which provides that "if further administration is possible and is in the best interests 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. Bankr. P. 1016. For the court to allow the case to proceed, it must determine that it is possible to do so in the best interests of the parties – all of the parties, not merely heirs of the Debtor. (One would question whether the heirs of the Debtor are even "parties" to this consideration.)

This bankruptcy case was filed on September 19, 2015. The Debtor passed away on September 25, 2014, six days later. Motion, Dckt. 31. No plan was confirmed, no plan payment ever made, or any proceeding conducted in this bankruptcy court. The Petition was not signed by the Debtor, but signed by Debra Gonzales pursuant to a power of attorney.

On Schedules A and D it is stated that the Debtor owns one piece of real property, with a value of $225,0009.00, which secures a debt in the amount of $82,361.00. Dckt. 1 at 9, 14. No significant assets are listed on Schedule B. Dckt. 1 at 10-12. Debtor lists creditors having $70,435.00 of general unsecured claims. Dckt. 1 at 16-18. Debtor had pension and retirement income which totaled $3,177.60 a month which was to be used to fund a plan.

Collier on Bankruptcy discusses the issue of continuing the administration of a Chapter 13 case following the death of a debtor when there is no confirmed plan as follows:

> "Nevertheless, since chapter 13 is viewed as a voluntary proceeding, in many cases, unless a plan was confirmed prior to the debtor's death, the case will be dismissed even if the debtor's estate has sufficient income to fund a plan. Indeed,

> at least one court has held that if the originally proposed plan cannot be confirmed after a debtor's death, the case must be dismissed because no one but the debtor may propose a plan under section 1321. [FN.3.] The same court held that the case could not be converted to chapter 7 because, under section 109, a probate estate is not eligible to be a debtor in a chapter 7 case. [FN.4.] Courts have also held that conversion, which would prevent creditors from reaching assets they could otherwise pursue, would not be in the interest of creditors and therefore would not satisfy the dictates of Rule 1016. [FN.5.] However, if a debtor has proposed a confirmable plan and that plan is still feasible after the death of the debtor, the court may allow the case to continue for the benefit of the debtor's estate. [FN.6.]
>
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>
> FN.3
> Footnote 3. *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999) .
>
> FN.4. [N/A]
>
> FN.5.
> Footnote 5. In re Hancock, 2009 Bankr. LEXIS 2174 (Bankr. N.D. Okla. Aug. 10, 2009); *In re Spiser*, 232 B.R. 669 (Bankr. N.D. Tex. 1999).
>
> FN.6.
> Footnote 6. *In re Perkins*, 381 B.R. 530 (Bankr. S.D. Ill. 2007) (denying trustee's motion to dismiss and rejecting argument that Rule 1016 is inconsistent with the statute); *In re Stewart*, 52 C.B.C.2d 1197 (Bankr. D. Or. 2004) (completion of plan was in interest of creditors and debtor's heirs).
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> ---

COLLIER ON BANKRUPTCY, SIXTEENTH EDITION, ¶ 1016.4.

In this case, the Bankruptcy Estate no longer has the income source, Social Security and retirement payments, with which to fund a Chapter 13 Plan. Instead, the Debtor's daughter will fund the Chapter 13 Plan. But for the largess (or non-bankruptcy financial interests) of the daughter there would be no funding for this Chapter 13 case.

The court does not stop its consideration of whether this bankruptcy case should continue, not withstanding the Debtor having died six days after it was filed, merely because the retirement funding source has also expired. It could well be that another bona fide income basis, consistent with the Bankruptcy Code could exist. Schedule B does not list any insurance polices and none are disclosed by Movant in which the estate has any interest.

Movant cites the court to California Code of Civil Procedure § 704.995 in support of the statement, "Also pursuant to CCP Section 704.995, notwithstanding the bankruptcy and the continuation fo the exemptions in bankruptcy, the declare homestead passes to debtor's daughter Yahnee." Motion, Dckt. 45, pg. 3:13-15. On Schedule C, a declared homestead exemption was listed in the amount of $175,000.00. Dckt. 1 at 13.

An uncertified copy of a Homestead Declaration has been filed as part of Movant's Response. Movant's counsel purports to testify under penalty of perjury that this is a true and correct copy of such document, but he does not provide any testimony as to why or how he has personal knowledge of this document as required by Federal Rules of Evidence 601 and 602. This document purports to have been signed and notarized in 1998. The document has not been authenticated by a witness or as permitted under Federal Rule of Evidence 902(4) [self-authenticating certified copies of public records].

If the Homestead Declaration is an accurate document of what has been filed with the Yolo County Recorder, then the Homestead Declaration was recorded on September 15, 1998, almost 17 years to the date prior to the filing of the instant bankruptcy case.

On Schedule J the Debtor lists no dependants. Dckt. 1 at 23. On Schedule I the Debtor does not list any income from anyone else residing at the property in which the home. Dckt. 1 at 23-24. Movant has filed what she states are amended schedules I and J. Dckt. 36. These clearly are not amended schedules I and J, correcting errors in the Debtor's income and expenses as of the commencement of this case. When the case was commenced Debtor did have the retirement income. Rather, these are attempted "supplemental" schedules I and J "showing post-petition chapter 13 income as of the following date: [date of changed income and expenses]. Official Form B 6I and 6J, Dckt. 36.

Movant now asserts in the Supplemental Schedule I that the Debtor's family will contribute $1,600.00 a month toward the expenses for their living at the home. One has to question whether such $1,600.00 income was being provided the Debtor before the commencement of this bankruptcy case. This $1,600.00 contribution is coincidentally exactly the amount to make the requirement monthly mortgage payment, Chapter 13 Trustee's expenses, and Debtor's Counsel's attorneys' fees to be paid through the plan. This still leaves nothing (a proposed 1% dividend in the unconfirmed Chapter 13 Plan, Dckt. 5) for distribution to creditors holding general unsecured claims.

The Motion states, but no evidence is provided by the court that "Yahnee Gonzales has been residing at 991 Farmham Avenue, Woodland, CA and is making the mortgage payment and helping with the upkeep of the property." Motion, Dckt. 45. No allegation is made, and no evidence is presented as to what is meant by "residing at," how long that has occurred, and how such relates to the proper application of California Code of Civil Procedure § 704.995.

Movant seeks to prosecute the Chapter 13 Plan proposed in this case on September 19, 2015. In it the Debtor proposed making monthly plan payments of $125.00 for a period of 36 months - which payments total $4,500.00. In addition to the Chapter 13 Trustee's fees (which will be estimated at 8% of the monthly payment), the Debtor also proposes to pay his attorney $3,000.00 for prosecuting this Chapter 13 case. The only other creditors to be paid are the general unsecured claims, with a 1% dividend on an estimated $70,000.00 in claims – for an aggregate $700.00 dividend. With a net monthly plan payment of $115.00 (8% for Trustee's fees equals $10.00 a month), the 36 months of plan payments provides $4,140.00 to pay Counsel and the general unsecured claims. Based on this rough calculation, the following person will receive the respective percentages of the plan distributions:

Counsel for Debtor.....75%, totaling $3,000.00

Unsecured Claim Dividend.....25%, totaling $1,140 (1.6% dividend).

RULING

The court first notes that there is little if anything accomplished in this Chapter 13 case other than paying Debtor's counsel. There is no meaningful reorganization of the Debtor's finances (such as curing mortgage arrearage, paying non-dischargeable taxes, restructuring outrageous interest rates for person loans). Second, there appears to have been little thought to the Movant properly administering the property of the estate – the real property. Rather than dealing with this as property of the estate and recovering fair rental value from all of the family members, Movant seeks only to eek out enough to make the minimum payment necessary to pay Debtor's counsel - irrespective of the actual rental value for the various persons who want to live in the property.

The court is also troubled by having a bankruptcy proceeding, which was only days old when the bankruptcy case was filed for the Debtor (with Movant signing the documents pursuant to a power of attorney) supplanting the California Superior Court in administering this as a normal probate proceeding. There being no bankruptcy law reasons for proceeding as a Chapter 13 (other than obtaining a discharge for paying creditors nothing through the bankruptcy case), the intrusion on the state law and state judicial system is not proper. There is no good faith, bona fide reorganization or restructuring of the Debtor's finances. There is only a discharge and avoiding of probate.

Further, for this court to proceed, it will have to determine California Probate law issues concerning the application of California Code of Civil Procedure § 704.995 following the post-petition death of a debtor and a homestead exemption which appears to be claimed by someone who is not a debtor in this bankruptcy case.

On this last point, this case has the scent of persons behind the scenes attempting to use the Debtor as puppet to obtain the benefit of bankruptcy for the non-debtors, while they safely hide themselves and their finances from the court. To the extent that Movant's arguments are correct that under California law all of the assets are exempt, then the experienced California Superior Court judge conducting the probate proceedings will be able to much more expeditiously properly administer California law then this court and a 36 months Chapter 13 Plan or a Chapter 7 liquidation (if the Movant were to want to convert the case to one under Chapter 7).

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to, abstain from hearing matters though federal court jurisdiction under § 1334 may exist. *See* 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c)(1),

> (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the

> interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

A bankruptcy judge's exercise of the federal judicial power is considered in light of core and non-core (related to) jurisdiction created by Congress and limited by the United States Constitution. *See Stern v. Marshall*, 564 U.S. ____ , 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011). This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. *See Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *affrm. Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

Even outside of bankruptcy the Supreme Court has recognized that there are areas of state law that federal courts should not unnecessary intrude upon. One of the principal areas of law in which the Supreme Court has directed that the lower courts carefully consider the exercise of federal court jurisdiction arises with respect to domestic relation (family law) matters. *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 12 (2004). "Thus, while rare instances arise in which it is necessary to answer a substantial federal question that transcends or exists apart from the family law issue, see, e.g., *Palmore v. Sidoti*, 466 U.S. 429, 432-434, 80 L. Ed. 2d 421, 104 S. Ct. 1879 (1984), in general it is appropriate for the federal courts to leave delicate issues of domestic relations to the state courts." *Id.* at 13.

The resolution of state probate law is of a similar nature to domestic relations and family law. Though Congress has properly (at least in the eyes of bankruptcy attorneys) given the federal court to determine almost any state law issue which has an impact on the bankruptcy case, there must be some federal bankruptcy purposes served, not merely a party's desire to have a court which is not experienced in the state law issues use bankruptcy as an alternative statutory scheme.

Here, but for a bankruptcy case having been filed for Debtor by Movant six days before his death, the California Superior Court would be handling this as a routine probate (if all as alleged by Movant is accurate). The plan which Movant seeks to advance is based on California exemption and probate law concerning the Debtor's residence and the rights asserted by at least one of the Debtor's children. While this court has no reservation about being able to learn, understand, and properly apply state law, there is no reason for the intrusion on these uniquely state law issues by a federal court pursuant to 28 U.S.C. § 1334 when there is no reorganization or restructuring taking place under Chapter 13 of the Bankruptcy Code. Rather, it creates the appearance that the federal court is being use to circumvent the normal state court process solely for the purpose of preventing the state court from fulfilling its duties under the California Constitution. FN.1.

FN.1. This court has also addressed the good faith requirements for there being a substantive bankruptcy purpose for this court exercising jurisdiction in the context of "Chapter 20" cases. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

Significantly, the court has to consider whether the continued administration of the case in bankruptcy is "in the best interests of all parties." Fed. R. Bankr. P. 1016. While the Debtor could claim various exemptions in this bankruptcy case, such exemptions may not continue into probate. Movant assures the court that all of the assets are exempt and can continue to be claimed as exempt in any probate proceeding. If so, then it does not matter to Movant or the heirs whether they get the assets through the probate proceeding or this court. If there is no difference, one would think that getting the assets sooner through probate (usually a 180 day notice period) would be better than after approximately 1155 days through the completion of a Chapter 13 Plan that pays nothing to creditors. If the Movant's assurances are inaccurate, then clearly continuing to administer a Chapter 13 bankruptcy case in which there is no restructuring of the Debtor's finances for a debtor who died six days after the case was filed for him would not be in the best interests of the creditors.

Therefore, the court denies the Motion and orders that the Chapter 13 case be dismissed. While one may argue that conversion to a Chapter 7 would allow an independent fiduciary to consider the issues, such a conversion would be of equal unnecessary intrusion on the normal state court probate process for no significant federal interest. From the proofs of claims filed to date, which total approximately $53,000.00, each of the creditors are sophisticated parties who are able to properly represent any claim they may have in the state probate court. There is no need for a Chapter 7 trustee to administer property of the estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016 filed by Debtor's representative 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.
>
> **IT IS FURTHER ORDERED** that the Chapter 13 case is dismissed.

6. 14-29407-E-13 VINCENT GONZALES
DPC-2 Gerald Glazer

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

Tentative Ruling: The Objection to Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and continued to this date to be heard in conjunction with the Motion as to whether this case should continued to be administered in this court or dismiss.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 29, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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. Vincent Gonzales ("Debtor") is deceased. The petition was filed by Debra Gonzales, Power of Attorney, for Debtor. Ms. Gonzales appeared at the Meeting of Creditors on October 23, 2014 and advised the Trustee that Debtor passed away six (6) days after filing of this case. The Meeting of Creditors was continued to November 20, 2014.

2. The Trustee has not been provided proof of power of attorney to date.

3. Debtor has failed to file his tax transcript or a copy of his Federal Income Tax Return for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists.

4. It appears that the Plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's nonexempt equity totals $173,849.00 and Debtor proposes a 1% dividend to unsecured creditors. This totals $704.35. The

non-exempt equity is from real property located at 991 Farnham Avenue, Woodland, California listed on Schedule A. Debtor used an incorrect exemption (California Code of Civil Procedure § 704.950) on Schedule C to try to exempt the equity in the property. Debtor exempted $175,000.00 under California Code of Civil Procedure § 704.950 for a declared homestead. Debtor has failed to provide a declared homestead to the Trustee to date. Trustee's Objection to Exemption is set for hearing on December 9, 2014.

The Trustee alleges that the Debtor has deceased shortly after the case was filed. Although not in itself a reason to deny confirmation, it does reflect that Debtor will not be able to make plan payments, as Debtor does not have the capacity to make any sort of payments. 11 U.S.C. § 1325(a)(6). Additionally, because the Trustee has no received power of attorney documents, this also indicates that there may be no legal entity that can act on Debtor's behalf in this case.

Further, the Trustee asserts that Debtor has failed to file tax return documents which are required to be filed with the Trustee in 11 U.S.C. § 521. The failure to comply with other requirements in the Bankruptcy Code is grounds to deny confirmation of the Plan. 11 U.S.C. § 1325(a)(1).

Finally, the Trustee alleges that the Plan will pay unsecured creditors a total of $704.35, when under a hypothetical Chapter 7 liquidation, unsecured creditors would receive approximately $173,849.00 total, should the Trustee's objection to exemption be sustained. This indicates that the Plan does not meet the required liquidation analysis for plan confirmation. 11 U.S.C. § 1325(a)(4).

NOVEMBER 25, 2014 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 3, 2015. Dckt. 26. The court ordered that supplemental pleadings shall be filed by Debtor on or before December 29, 2014. The court further ordered that replies, if any, shall be filed and served on or before January 20, 2015.

The court addressed some concerns as to the proposed plan as presented before continuing the matter. The court noted the following:

> The proposed Chapter 13 Plan "requires" the deceased Chapter 13 Debtor to make $125.00 a month payment for thirty-six months. No Class 1 Claims are to be paid. No Class 2 Claims are to be paid. No Class 3 Claims are to be paid. One Class 4 Claim is to be paid directly by the "Debtor," in the amount of $1,087.75 a month to Bank of America (presumably Bank of America, N.A. and not one of the other 17 entities with the words "Bank of America" in their names). No Class 5 Claims are to be paid. No Class 6 Claims are to be paid. For Class 7, a projected $70,000.00 in general unsecured claims are to be paid a 1% dividend – $700.00.
>
> Debtor's income consists of $1,798.00 in Social Security and $1,379.60 in retirement/pension a month. Schedule I, Dckt. 1 at 22. Presumably, this monthly income has terminated at Debtor's death. No explanation is given how the deceased Debtor will fund the Plan for thirty-six months.

The $125.00 a month will fund paying the deceased Debtor's counsel $2,000.00 of his $3,000.00 in legal fees and the Chapter 13 Trustee's fees. Assuming 8% of the plan payments for Chapter 13 Trustee fees and expenses, that leaves $115.00 a month to fund the plan. Eighteen months of the plan consumers the payments to pay counsel the $2,000.00. Assuming no other administrative expenses, there would be $2,185.00 to disburse on the $70,000.00 of general unsecured claims. This would increase the dividend to 3% from the 1% guaranteed under the Plan.

No explanation has been provided as to why a 3% dividend is in good faith, reasonable, and consistent with the Bankruptcy Code in light of the Debtor having passed away six days into this case. Debtor has no spouse. Statement of Financial Affairs Question 16, Dckt. 1 at 30. It appears that this bankruptcy case has been filed to preclude the proper administration of the deceased Debtor's probate estate rather than a good faith rehabilitation of an individual debtor's finances. This appears to be a case where the deceased Debtor is merely the proxy for third-parties who seek to have their personal financial interests advance under the guise of the Debtor.

DEBTOR'S SUPPLEMENTAL BRIEF IN SUPPORT OF CONFIRMATION

On December 29, 2014, the Debtor filed a Brief in Support of Confirmation. Dckt. 37. The Debtor responded as follows:

1. On December 21, 2014, the court appointed Desiree Gonzales as Debtor's personal representative to proceed with this matter.

2. Pursuant to the court's December 21, 2014 order, a separate motion for determination whether the Chapter 13 can be further administered in the best interests of the parties will be filed on or before January 20, 2015.

Some of Debtor's children are residing at Debtor's residence at 991 Farnham Avenue, Woodland, California, and were so residing prior to Debtor's death. Tahnee Gonzales has been residing at the residence and is making the mortgage payment and helping with the upkeep of the residence. Debtor's daughter and personal representative Desiree Gonzales is contributing $125.00 per month to make the plan payments. Schedules I and J are being amended to reflect the current financial status of the estate of the Debtor.

3. Further administration of this Chapter 13 case is possible and in the best interest of the parties. Fed. R. Bankr. P. 1016 provides that the death of a Chapter 13 debtor does not automatically end the case, but that 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. Also, pursuant to California Code of Civil Procedure § 704.995, notwithstanding the bankruptcy and the continuation of the exemptions in bankruptcy, the declared homestead passes to Debtor's daughter Yahnee. Finally, under both California Code of Civil Procedure § § 704.110 and 704.115, death benefits from retirement plans are exempt notwithstanding the bankruptcy. Thus,

the current plan is an efficient way to administer Debtor's estate and the creditors are treated appropriately and fairly.

TRUSTEE'S RESPONSE

The Trustee filed a response on January 6, 2015. Dckt. 42. The Trustee responds as follows:

1. The Debtor is current under the terms of the Plan filed on September 19, 2014 (Dckt. 5).

2. The Debtor's Ex Parte Application to Substitute Deceased Party Pursuant to Federal Rules of Bankruptcy Procedure 7025 was granted by the court and the order filed on December 21, 2014. Dckt. 35.

3. The court ordered that the Debtor's personal representation, Desiree Gonzales, file and serve a regularly noticed motion (Local Bankr. R. 9014(f)(1)) requesting a determination pursuant to Fed. R. Bankr. P. 1016 that this Chapter 13 case should properly proceed notwithstanding the death of the Debtor by January 20, 2015.

FEBRUARY 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 to be heard in connection with the Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016. Dckt. 50.

DISCUSSION

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

The court has granted the Debtor's Motion to Substitute Desiree Gonzales as the personal representative for the deceased Debtor. Furthermore, the court has granted the Motion to Determine that Case May Proceed Pursuant to Fed. R. Bankr. P. 1016, finding that the further administration is proper and in the best interest of the estate and creditors.

However, the court has determined that the Chapter 13 case should not continued to be administered and should be dismissed. Fed. R. Bankr. P. 1016. As addressed in that decision, there exist significant issues concerning the prosecution of this case. First and foremost, under the proposed Chapter 13 Plan there are little, if any, restructuring of the Debtor's finances through the Plan. Rather, it is nothing more than a disguised liquidation which provides for paying Debtor's counsel.

Secondly, the Representative of the Estate intends to allow various family members reside in bankruptcy estate property. In the place of rent, the family members are to pay just enough money to fund a plan that pays Debtor's counsel.

Third, the Representative of the Estate argues that all assets are exempt and that the Debtor's heirs can claim the exemptions in the probate case. Maybe this is accurate, or possibly it is not. What Movant has told the court is that various members of the Debtor's family were residing in his home prior to the filing of the bankruptcy case, but no income from such "tenants" is

shown on Schedule I filed for the Debtor. Dckt. 1.

Fourth, no basis has been provided the court for this federal court intrusion through the expansive grant of jurisdiction under 28 U.S.C. § 1334 on the uniquely state law probate process. All the proposed Plan does is grant the Debtor a discharge for paying his creditors nothing (the 1%-3% possible dividend to the only creditors being paid through the plan equates to nothing). There is no federal interest purpose under Chapter 13 being served which warrants this court ripping the matter from the California Superior Court because the Debtor died six days before the Chapter 13 case was filed.

The court sustains the Objection and denies 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.
>
> The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and the Debtor's Chapter 13 Plan filed on September 19, 2014 is not confirmed.

7. 14-32313-E-13 DPC-1 SALVADOR/ANGELINA LEON Thomas Gillis

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 2-4-15 [29]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 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.

Debtor filed a Statement of Non-Opposition to the Trustee's Objection. Dckt. 34.

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. Debtor's plan relies on the Motions to Value Collateral of Navy Federal Credit Union on a 2008 BMW, and Kinecta Federal Credit Union on a 2004 Chevy, which are both set for hearing on March 3, 2015. If the motions to value are not granted, Debtor's plan does not have sufficient monies to pay the claims in full, 11 U.S.C. § 1325(a)(6).

2. Section 1.03 of Debtors' plan (Dckt. 5) lists the term of the plan as 0 months. Based on the Statement of Current Monthly Income, Form 22C-1 (Dckt. 1, pgs. 48-50), the required commitment period is 60 months.

3. Debtors' plan fails to provide for the secured debt of Capital One Auto Finance. This debt is not disclosed in the plan or schedules. The creditor filed a Proof of Claim No. 2-2 for $17,872.99, and lists the collateral as a 2011 Nissan Altima. Debtor Angelina Leon is listed on the contract attached to the claim, as well as Carmen Leon. Debtor testified at the First Meeting of Creditors held on January 29, 2014 that this vehicle belongs to their daughter and she makes the payments. The debt should be listed on Schedule D as secured and provided for in Class 4 of the plan. The co-debtor should be disclosed on Schedule H. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that the Debtor wishes to conceal the proposed treatment

of a creditor.

DEBTORS' NON-OPPOSITION

The Debtors filed a non-opposition on February 18, 2015. Dckt. 34.

DISCUSSION

The Trustee's objections are well-taken. The plan relies on two motions to value collateral that have yet to be granted. The plan improperly states the plan commitment time.

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

Therefore in light of the Trustee's objections and Debtors' non-opposition, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

8. 14-32313-E-13 SALVADOR/ANGELINA LEON
TOG-1 Thomas O. Gillis

MOTION TO VALUE COLLATERAL OF NAVY FEDERAL CREDIT UNION
1-29-15 [19]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, and Office of the United States Trustee on January 29, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Navy Federal Credit Union ("Creditor") is denied without prejudice.

The Motion filed by Salvador and Angelina Leon ("Debtor") to value the secured claim of Navy Federal Credit Union ("Creditor"). Dckt. 19.

The only address served for Creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters

proceed expeditiously.”). A simple search on the National Credit Union Administration website provides contact information with a physical address at 820 Follin Lane, SE, Vienna, Virginia and the name James C. Dawson as the Manager/CEO. http://researchcu.ncua.gov/Views/creditUnionInfo.aspx

Furthermore, the declaration provided by Debtor Salvador Leon states that he provides his testimony under penalty of perjury based on his “own personal knowledge and know them to be true, except those facts stated on information and belief, of which facts we are informed and believe to be true.” Dckt. 22. In substance, the Debtor is stating is stating “I hope the information is true and correct, and though I don’t’ know, I’m informed by someone else and believe (because it lets me win) that what I’ve said above is true and correct.”

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
>
> (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)".

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

Debtor has failed to provide the court with competent evidence of the obligation and Debtor’s interests. As such, the motion is denied without prejudice. FN.1.

FN.1. Given that the proper form of the declaration is, and has long been specified by statute, and is one of the simplest things which counsel can do, there is no basis for continuing the hearing to allow the preparation of a new declaration. Debtor can start over, finding a witness who can testify based on personal knowledge.

Therefore, because service was improper and Debtor has failed to provide the court with competent evidence of the obligation and Debtor's interests, the Motion is denied without prejudice.

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

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

9. 14-32313-E-13 SALVADOR/ANGELINA LEON
TOG-2 Thomas Gillis

MOTION TO VALUE COLLATERAL OF KINECTA FEDERAL CREDIT UNION
1-29-15 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, and Office of the United States Trustee on January 29, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Kinecta Federal Credit Union ("Creditor") is denied without prejudice.

The Motion filed by Salvador and Angelina Leon ("Debtor") to value the secured claim of Kinecta Federal Credit Union ("Creditor"). Dckt. 24.

The only address served for Creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters

proceed expeditiously."). A simple search on the National Credit Union Administration website provides the contact information of Creditor with a physical address at 1440 Rosecrans Ave., Manhattan Beach, California and the name Keith A. Sultemeier as the Manager/CEO. http://researchcu.ncua.gov/Views/creditUnionInfo.aspx.

Apparent Misstatement of Facts Under Penalty of Perjury

The Debtors state under penalty of perjury in his declaration that "Said vehicle was purchased more than 910 days prior to the date the case at bar was filed." Dckt. 27, paragraph II. While the Debtors do not provide the date the Vehicle was purchased, a look at Proof of Claim No. 7 filed by Creditor shows that the Vehicle was purchased April 7, 2013 based on the attached Retail Installment Contract. This is less than 910 days from the date of filing the instant bankruptcy case, which was on December 23, 2014.

The Debtors appear to have knowingly misstated under penalty of perjury in testifying that the Vehicle was purchased more than 910 days prior to the date of filing. Or it may be that Debtors never read their declaration and merely signed it because it was presented to them as something necessary for them to win. Neither is a positive conclusion for someone trying to convince the court, creditors, and the Chapter 13 Trustee that they are prosecuting the case in good faith.

Lastly, the declaration provided by Debtor Salvador Leon states that he provides his testimony under penalty of perjury based on his "own personal knowledge and know them to be true, except those facts stated on information and belief, of which facts we are informed and believe to be true." Dckt. 27. In substance, the Debtor is stating is stating "I hope the information is true and correct, and though I don't' know, I'm informed by someone else and believe (because it lets me win) that what I've said above is true and correct."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

> § 1746. Unsworn declarations under penalty of perjury
>
> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

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

(Signature)".

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

It may be that the Debtors are hanging a misstatement of a fact on a contention of “well that what I thought, so I said it.”

Debtor has failed to provide the court with competent evidence of the obligation and Debtor’s interests. As such, the motion is denied without prejudice. FN.1.

FN.1. Given that the proper form of the declaration is, and has long been specified by statute, and is one of the simplest things which counsel can do, there is no basis for continuing the hearing to allow the preparation of a new declaration. Debtor can start over, finding a witness who can testify based on personal knowledge.

Therefore, for the reasons stated supra, the Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Salvador and Angelina Leon (“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.

10. 15-21018-E-13 SHARON NORD
MOH-1 Michael O Hays

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
2-17-15 [13]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Sharon Nord ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 717 Trinity Street, Orland, California ("Property"). Debtor seeks to value the Property at a fair market value of $82,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's

value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $112,557.93. Creditor's second deed of trust secures a claim with a balance of approximately $30,260.77. 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 Sharon Nord ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 717 Trinity Street, Orland, 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 $82,500.00 and is encumbered by senior liens securing claims in the amount of $112,557.93, which exceed the value of the Property which is subject to Creditor's lien.

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

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

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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

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

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Dale and Belinda Kempton ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $989.00 a month to $817.71 a month. The terms of the modification include:

1.New Principal Balance: $181,027.70

2.Interest Rate: Interest at the rate of 4.5% will begin to accrue on the New Principal Balance as of January 1, 2015

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

Dckt. 37, Exhibit A.

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

TRUSTEE'S OBJECTION

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

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

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

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

DEBTOR'S REPLY

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

1. The Debtor requests a continuance of the hearing to allow the Debtor to get in contact with Creditor to determine the actual holder or owner of the note. Debtor's attorney has been in contact with Creditor and is currently awaiting a call back with Creditor to determine the proper creditor. The Debtor

requests a continuation of the hearing to allow Debtor to obtain further documentation from Creditor to clarify their status as creditor or servicer of the subject loan.

2. The Debtor requests judicial notice that, pursuant to the actual terms of the proposed loan modification (Dckt. 39, Exhibit A, pgs 2-3) and as reiterated in the Trustee' objection, the New Principal Balance of $181,027.70 includes a deferred balance of $26,927.70. As a result, the "Interest Bearing Principal Balance" of $154,100 shall accrue interest at 4.5% beginning January 1, 2015. This distinction between "New Principal Balance" and "Interest Bearing Principal Balance" may perhaps not have been clear in Debtor's originally filed motion. Debtor's expected monthly payment, beginning February 1, 2015, of $818.71 (consisting of $697.78 principal and interest and escrow of $124.93) remains the same.

FEBRUARY 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on February 24, 2015 to allow the Debtor to further investigate. The court ordered that the Debtor shall file and serve supplemental pleadings on or before February 17, 2015. Any replies or objections shall be filed on or before February 24, 2015.

DEBTORS' REPLY

Debtors filed a supplemental reply on February 12, 2105. Dckt. 48. The Debtors state that on February 20, 2105, Creditor filed an Amended Proof of Claim No. 14-1. The Amended Proof of Claim includes a Corporate Assignment of Deed of Trust that shows an assignment of the deed of trust from Mortgage Electronic Registration Systems, Inc., as Nominee for Ohio Savings Bank, to Wells Fargo Bank, N.A.. The date of recording of the assignment was January 2, 2014.

The Debtors alleged that based on the amended Proof of Claim and the recorded assignment, Creditor is the creditor with the authority to enter into the loan modification.

CREDITOR'S JOINDER

Creditor filed a joinder to the Motion on February 12, 2015. Dckt. 50. The Creditor states that the loan modification was offered to Debtors by Creditor. Both Debtors and Creditor signed the loan modification agreement prior to the filing of the instant Motion.

On February 10, 2015, Creditor filed the amended Proof of Claim 14-1 in the amount of $178,841.82. Creditor's claim is secured by the Property. The amended Proof of Claim contains the proper assignment transferring a beneficial interest to Creditor. Further, the Claim contains a proper note and endorsement.

TRUSTEE'S RESPONSE

The Trustee filed a response on February 23, 2015. The Trustee states that the Corporate Assignment of Deed of Trust attached to the amended Proof of Claim provides no information as to whether the underlying obligation of the loan was transferred along with a deed of trust. The Corporate Assignment of

Deed of Trust states only that an interest has been transferred from Ohio Savings Bank to Wells Fargo Bank, N.A. the Trustee is concerned the assignment may not actually assign the note which is secured by the deed of trust.

DISCUSSION

The Trustee's objection is well-taken. A review of the Corporate Assignment of Deed of Trust shows that the assignment may not have included the underlying obligation. The Corporate Assignment of Deed of Trust states:

> For Value Received, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR OHIO SAVINGS BANK, ITS SUCCESSORS AND ASSIGNEES hereby grants assigns and transfers to WELLS FARGO BANK, NA at 1 HOME CAMPUS, DES MOINES, IA 50328 all its interest under that certain ***Deed of Trust*** dated 01/23/2005. . . .

Proof of Claim 14-1.

However, though Wells Fargo Bank, N.A. never clearly states that the Note secured by the Deed of Trust was assigned to it, the copy of the Note attached to Amended Proof of Claim No. 14 is endorsed in blank. Presumably, Wells Fargo Bank, N.A. is asserting that it is in possession of the Note endorsed in blank (though no simple declaration so stating has been filed and no such statement is made under penalty of perjury as part of Amended Proof of Claim 14). The court infers that Wells Fargo Bank, N.A does represent to the court that it is in physical possession of the Note endorsed in blank and enters into the loan modification as the holder of such bearer paper.

Based on this inference based on the declaration submitted by Wells Fargo Bank, N.A., the Trustee's objection is overruled.

Looking at the terms of the modification, the loan modification is in the best interest of the Debtors, creditors, and the estate. The loan modification results in a reduction in monthly payments of $171.29.

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 Dale and Belinda Kempton having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the court authorizes Dale and Belinda Kempton ("Debtor") to amend the terms of the loan with Wells

Fargo Bank, N.A., which is secured by the real property commonly known as 710 Elder Dr., West Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 37.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

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

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant

Motion on January 13, 2015. Dckt. 32. The Trustee objects on the following grounds:

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

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

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

JANUARY 27, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 to allow for supplemental pleadings. The court ordered supplemental pleadings to be filed and served on or before February 17, 2015, and Replies, if any, to be filed and served on or before February 24, 2015.

TRUSTEE'S SUPPLEMENTAL DECLARATION

Kari Stewart, an employee for the Trustee, filed a supplemental declaration on February 19, 2015. Dckt. 40. The Declaration states that Debtors failed to file supplemental pleadings by the February 17, 2015 deadline ordered by the court and that the Trustee's objections remain unresolved.

SUPPLEMENTAL SCHEDULES I AND J

On February 24, 2015, seven days after the court ordered deadline, Debtors filed supplemental Schedules I and J. Dckt. 42. The supplemental schedules list Debtor Darren Carter as unemployed and the Debtors having a disposable income of $653.66.

DISCUSSION

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

The Trustee's objection continue to be well-taken. The Debtors filed the supplemental schedules on February 24, 2015, albeit seven days after the deadline set by the court. The supplemental schedules show the Debtors having a disposable income of $653.66. On the supplemental Schedule I, question 13, the Debtors state that they do not expect an increase or decrease in income within the year after filing the form. Given Debtor Darren Carter's unemployment and the terms of the proposed plan, it does not appear that the Debtors can make the plan payments given the current unemployment of Debtor.

The Debtors are having to maintain two separate households, with Mrs. Alexander-Carter being the only Debtor with income. Under the Chapter 13 Plan there are no residences for which secured claims are to be paid. The Debtors do have substantial priority tax claims provided for in Class 5 – in excess of $42,000.00. The current proposed Plan payment of $650.00 will be just enough to pay the two claims secured by the Debtors' vehicles and the $21,473.91 secured claim of the Internal Revenue Service.

While the proposed increase is clearly speculative, the Plan requires Mr. Carter to obtain employment and generate additional income to fund the plan payment which increases to $1,621.00 in January 2017. In light of there being no other creditors impacted by the delay and the federal and state taxing agencies not objecting (quite possibly having determined that there really isn't a better "plan"), the court grants the Motion.

While feasibility turns on future income, it only requires Mr. Carter to go from the $0.00 now to a $1,000.00 a month net income. Though the Trustee's opposition is warranted, this is one of the unique cases in which the creditors who are to be paid and the debtors both benefit from an currently unidentified source of additional income to fund the plan in the future.

The court also requires that Mr. Carter notify the Trustee within 30 days of obtaining any employment, any change in employment, the receipt of income from any source, and for both Debtors to provide the Trustee with annual tax returns within 30 days after they are filed with the taxing agencies.

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 the Motion is granted, and the First Amended Plan filed on December 15, 2014, as further amended in the following paragraph of this order, is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.
>
> **IT IS FURTHER ORDERED** that Darren notify the Trustee in writing within 30 days of obtaining any employment, any change in employment, the receipt of income from any source, and that Darren Carter and Amy Alexander-Carter, and each of them, provide the Trustee with annual tax returns within 30 days after they are filed with the taxing agencies. This additional provision shall be included in the order confirming the Chapter 13 Plan.

13. 11-27933-E-13 JIMMY LOVE **MOTION TO MODIFY PLAN**
DEF-6 David Foyil **1-16-15 [97]**

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 16, 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 deny the Motion to Confirm the Modified Plan.

Jimmy Love ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 16, 2015. Dckt. 97.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 17, 2015. Dckt. 105. The Trustee objects on the following grounds:

1. The Trustee is uncertain of Debtor's ability to make the plan payment proposed. Debtor is proposing a plan payment of $80,621.22 total paid

in through month 45, then $2,481.00 for months 46 through 60. Debtor is currently $14,446.44 delinquent under the confirmed plan but current under the modified plan.

The Debtor has started to make higher payments. The Trustee cannot determine if the Debtor has just recently increase their income with side jobs, or if they are not depositing all of their income into his bank account, or if they are maintaining that the account statement actually support the claimed income.

Debtor's prior motion to modify and modified plan proposed a plan payment of $2,348.00 and included Proof of Income as Exhibit E (Dckt. 78) which consisted of copies of bank statement for what appeared to be personal and business accounts.

The Trustee objected as the bank statement did not provide proof of Debtor's income. Debtor replied stating Debtor commingles personal and business bank accounts but did not provide any evidence to support his claimed income.

Debtor's supplemental Schedule I filed January 16, 2016 (Dckt. 103) reflects Debtor's take home pay is $2,733.62, which is unchanged from Debtor's prior Schedule I (Dckt. 78, Exhibit F), and $1,125.00 in side jobs ($992.00 on prior Schedule I) for a combined monthly income of $3,858.62. Debtor's prior Schedule I reflected a combined monthly income of $3,725.62.

Debtor's Motion and Declaration indicate Debtor has increased his side job income to $1,125.00 by taking on more work and working longer hours. Debtor now proposes to increase the plan payment from $2,348.00 under the prior modified plan to $2,481.00 which includes $1,125.00 from side jobs. Debtor has not clarified why the prior documentation did not support the income claimed.

2. The Trustee cannot determine if the Debtor is disputing the amount of the prior mortgage payments paid by the Trustee to the Class 1 creditor by the provisions in § 2.08(c). If the Debtor is not disputing the amounts paid previously, the Trustee has no objection if the order confirming provides that the monthly contract installment amount as provided in § 2.08(c) shall be $1,393.34 as of July 1, 2014.

The Debtor's historical monthly payments as listed in Class 1 of the modified plan does not match what was paid. Due to mortgage adjustments from the lender, Debtor's mortgage payment adjusted accordingly based on § 3.10 of the plan: $1,191.60 pursuant to confirmed plan; $1,405.35 effective May 25, 2011; $1,488.30 effective July 25, 2012; $1,428.90 effective July 25, 2013; $1,393.34 effective July 25, 2014. The modified plan does not provide for payments of $1,405.35 effective May 25, 2011. Debtor's mortgage payments are current under the confirmed plan with $65,626.28 in principal having disbursed to date.

REVIEW OF DEBTOR'S EVIDENCE

Debtor provides his Declaration in support of confirmation. Dckt. 100. He testifies that he filed the present bankruptcy case because he lost income as a construction worker due to hand surgery. Debtor states that though he "believed" he was current on his plan payments, he became delinquent, he fell into default. Debtor offers no explanation as to why he had a "belief" he was

current when he actually was in default.

Though he has defaulted in the past, Debtor states that he will increase the payments in the proposed Fourth Modified Chapter 13 Plan. Debtor states that his average income is $3,858.62 a month. This is $850.00 than the income he stated he was receiving in 2012 from his job. Supplemental Schedule I, Dckt. 44. This increase is not explained.

Debtor states that he will also have an additional $1,125.00 a month from taking on more side jobs. In 2012 Debtor stated that his gross income from side jobs was only $340.00 a month. *Id.* He testifies that he can do this by extending the time he is working.

Debtor directs the court to his Supplemental Schedules I and J filed on January 16, 2015. Dckt. 103. On the 2015 Supplemental Schedule I Debtor states that his gross wages are still $3,034.50. He has payroll deductions of only $300.00 for taxes and Social Security. This is $850.00 a month less than he states in his Declaration filed the same day.

In the 2015 Supplemental Schedule I Debtor increases his side job income to $1,125.00 (a 330% increase from the prior $340.00).

On 2015 Supplemental Schedule J Debtor lists some expenses that do not appear to be feasible (or realistic) for a family consisting of the Debtor and his Daughter:

A. Food and Housekeeping Supplies.....$300.00

B. Clothing, Laundry, Dry Cleaning.....$100.00

C. Medical and Dental Expenses.....$ 0.00

D. Transportation.....$250.00

E. Health Insurance.....$ 0.00

F. Income Tax (for self employed side jobs).....$ 0.00

G. Expenses for Side Jobs.....$ 0.00

Dckt. 103.

Only with what appear to be clearly unreasonable expenses does the Debtor present the appearance that he has $2,481.00 of Monthly Net Income on the 2015 Supplemental Schedule J. *Id.*

DISCUSSION

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

The Trustee’s objections are well-taken. A review of the instant proposed plan as well as the supporting documents and supplemental schedule raise concerns over whether there has been full disclosure of all income. Debtor has commingled his personal and business finances, rendering them untrackable by the Trustee and creditors. Debtor continued to provide no evidence concerning

his finances and the commingling of accounts.

Though 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation, it does not permit a debtor to hide his finances and render it impossible for the Trustee to evaluate whether a plan is proposed in good faith and is feasible, especially in light of the increased in side-job income without any evidence of such.

Further, taking the Debtor's evidence on its face, the proposed Fourth Modified Plan is not feasible. Possibly the Debtor has always had the present income and did not disclose it as the Chapter 13 Trustee fears. Even if the Debtor has the income, the defaults occurred because the Debtor's expenses are not realistic and appear to have been constructed to come up with a pre-determined plan payment amount, not what the Debtor can actually afford to pay.

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

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

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

14. 13-21833-E-13 NADA DAGHER **MOTION TO MODIFY PLAN**
WW-4 Mark Wolff **1-27-15 [57]**

Final Ruling: No appearance at the March 3, 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 27, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 27, 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.

15. 14-30035-E-13 GUSTAVO DIAZ-ISLAS
CBS-1 Chaland Scrivner
MOTION TO VALUE COLLATERAL OF LIGHTHOUSE MORTGAGE
1-25-15 [45]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 27, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Lighthouse Mortgage ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Gustavo Diaz-Islas ("Debtor") to value the secured claim of Lighthouse Mortgage ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 11244 Tahoe Drive, Truckee, California ("Property"). Debtor seeks to value the Property at a fair market value of $218,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $218,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $73,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Gustavo Diaz-Islas ("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 Lighthouse Mortgage secured by a second in priority deed of trust recorded against the real property commonly known as 11244 Tahoe Drive, Truckee, 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 $218,000.00 and is encumbered by senior liens securing claims in the amount of $218,000.00, which exceed the value of the Property which is subject to Creditor's lien.

16. 14-32345-E-13 BARBARA GIAMMARCO — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 Lucas Garcia — **2-4-15 [15]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor is $1,800.00 delinquent in plan payments to the Trustee and the next scheduled payment of $1,800.00 is due February 25, 2015. The Debtor has paid $0.00 into the plan.

2. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I (Dckt. 1, pgs 21-22) lists gross monthly income of $200.00 from family assistance, $1,568.00 from social security, and $1,011.86 from retirement, for total income of $2,779.86. Debtor has not filed a Declaration regarding the $200.00 family assistance, setting forth the person making that contribution and their ability and willingness to provide this contribution throughout the 5 year term of the plan.

Debtor's Schedule J (Dckt, 1, pgs, 23-24) lists total expenses for a household of three persons as $930.00 per month. This includes property insurance of $85.00, home maintenance of $75.00, utilities and phone of $300.00, food of $300.00, personal care and medical of $70.00, and health insurance of $100.00. The IRS Allowable Living Expense National Standard for three people is $1,249.00 monthly food, housekeeping, clothing, personal care and miscellaneous expenses. The Trustee is concerned that the Debtor's budget is insufficient to maintain the household.

3. Section 2.06 of the plan indicates attorney fees of $4,000.00 are charged in this case, of which $0.00 has been paid to date. Rights and Responsibilities filed on December 24, 2014 (dckt 7) indicates that $0.00 fees have been charged. The Disclosure of Attorney Compensation, Form 2016(b) (Dckt. 1, pg 34) also indicates that $0.00 fees have been charged. While the plan in section 2.06 proposes to pay the attorney $4,000.00 through the plan under Local Bankr. R. 2016-1(c), the Disclosure of Compensation of Attorney appears to list in item 6 that the attorney services do not include some services required such as judicial lien avoidances and relief from stay actions. The Trustee believes that the attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

DEBTOR'S ATTORNEY'S RESPONSE

Lucas Garcia, the attorney for Debtor, filed a response on February 24, 2015. Dckt. 20. Debtor's counsel responds as follows:

1. An amended Rights and Responsibilities was filed on February 9, 2015 (Dckt. 19) to reflect accurate attorney's fees.

2. The Debtor cured the delinquency for the January 2015 payment and has made the February 2015 payment. Dckt. 22.

3. The Debtor's live-in son has filed a declaration explaining his contribution to the house and their agreed upon living situation. Dckt. 21.

DISCUSSION

The Debtor's reply addresses and cures any deficiencies highlighted by the Trustee's objections.

First, the Debtor has provided a copy of the cashier's check paid to the order of the Trustee in the amount of $3,600.00 which cures the delinquency and the February 2015 payment. Dckt. 22.

Second, the declaration of Debtor's live-in son provides evidence and testimony that states he provides $200.00 per month to Debtor and that he is gainfully employed to provide such contribution.

Third, the Debtor filed an amended Rights and Responsibilities which shows that Debtor's counsel charged $4,000.00. As to the Trustee's concern as to the Disclosure of Compensation of Attorney for Debtor(s), the court reads the Disclosure as the fee does not include representation in adversary proceedings. The Disclosure states that the fee does not include "[r]epresentation of the debtors in any dischargeability actions, judicial lien avoidances, relief from stay actions or any other adversary proceeding." Dckt. 1, pg. 34. Local Bankr. R. 2016-1(c) only requires debtor's counsel to provide "all preconfirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed." The court does not read the Disclosure to be in violation of Local Bankr. R. 2016-1(c). Therefore, the objection is overruled.

However, what Debtor has not addressed is how expenses of $930.00 a month is reasonable for a family of three persons. Some of the questionable expenses which indicate that the Plan is not feasible, for a family unit of three persons, include:

A. Electricity and Natural Gas.....$130.00

B. Water, Sewer, Garbage.....$ 35.00

C. Food and Housekeeping Supplies.....$300.00

D. Clothing, Laundry, Dry Cleaning.....$ 0.00

E. Medical and Dental Expenses.....$ 50.00

F. Transportation.....$ 0.00

G. Entertainment.....$ 0.00

H. Taxes.....$ 0.00

Schedule J, Dckt. 1 at 23-24.

In the Chapter 13 Plan Debtor states that the delinquency on the claim secured by his residence is $14,385.82 (arrearage). The current monthly installment amount is $1,332.72. The arrearage is equal to almost 11 full monthly regular monthly mortgage payments. On Schedule A Debtor states under penalty of perjury that the value of the residence is exactly equal to the liens against that property. *Id.* at 8.

Debtor has not shown that the Plan is feasible or reasonable. Debtor offers no explanation as to why the substantial defaults occurred on the claim secured by the residence and why Debtor will now be able to make the payments. Debtor offers no explanation as to why the two adult family members who live with her do not provide any payment for their expenses or living in the house. Merely saying that one of them will pay $200.00 a month to create the illusion that the plan is feasible does not provide fair compensation to the estate for their using the residence.

The Debtor's son, who is to pay the $200.00 a month for the "rent," offers no evidence as to what should be paid for rent or his income. The son does testify that he pays for his son's expenses.

Debtor also offers no testimony as to how she was able to cure the $1,800.00 delinquency and the source of those monies.

While addressing some of the Trustee's objections, Debtor has failed to show that the Plan is feasible. Rather, it appears that in a desire to retain a home for the son and grandson to live in, Debtor is failing to properly provide for her own expenses.

Therefore, with the Trustee's objections are sustained. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) 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 the Objection is sustained, Debtor's Chapter 13 Plan filed on December 24, 2014 is not confirmed.

17. 12-28547-E-13 PGM-7 | **RUBEN GUTIERREZ AND GRACIELA GUITIERREZ**
Peter Macaluso | **CONTINUED MOTION TO APPROVE LOAN MODIFICATION**
1-8-15 [99]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is denied without prejudice.

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

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

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

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

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

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

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

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

TRUSTEE'S RESPONSE

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

DEBTOR'S REPLY

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

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

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

FEBRUARY 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 to give the Debtor the opportunity to contact Ocwen Loan Servicing, LLC to get the necessary documentation and evidence showing that Ocwen Loan Servicing, LLC has the authority to enter into a loan modification.

DISCUSSION

No supplemental pleadings have been filed since the court continued the hearing.

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

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

If the court were to grant such order, it would be ineffective, subjecting Debtor to years of paying under a modification, only to discover that Debtor still owes that unidentified creditor the full amount of the debt. Such discovery after years of performing under a modification would be an unhappy day not only for the Debtor, but her counsel as well – most likely leaving the Debtor unable to pay under the modification.

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

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

Therefore, because the Debtor has not provided any evidence that Ocwen Loan Servicing, LLC has the authority to enter into a loan modification, the Motion is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Ruben and Graciela Gutierrez having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is denied without

prejudice.

18. 14-28348-E-13 CAROLYN WILLIAMS
MET-4 Mary Ellen Terranella

MOTION TO APPROVE LOAN MODIFICATION
1-31-15 [52]

Final Ruling: No appearance at the March 3, 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 31, 2015. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Carolyn Williams ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A., as attorney in fact for Deutsche Bank National Trust Company, as Trustee for RBSGC 2007-A ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification. The loan modification modifies the new principal balance to $443,085.41, $39,503.33 of which is deferred and no monthly payments will be made on that amount. The interest bearing principal balance is $403,582.08. The new maturity date is May 1, 2054. The principal, interest, and monthly escrow payment amount is $1,582.49. The interest is fixed at 2% for the first five years, then increases to 3.00% for one year, then increases to 4.00% for one year, then caps at 4.375% for the remainder of the 40 year loan term.

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 notice of non-opposition on February 9, 2015.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Carolyn Williams 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 Carolyn Williams ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., as attorney in fact for Deutsche Bank National Trust Company, as Trustee for RBSGC 2007-A, which is secured by the real property commonly known as 137 Dewberry Drive, Vacaville, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 55.

19. 13-35754-E-13 MATTHEW/ARIANA VICKERS — MOTION TO CONFIRM PLAN
WSS-5 W. Steven Shumway — 1-15-15 [63]

Final Ruling: No appearance at the February 26, 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, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 creditors. The Chapter 13 Trustee withdrew his objection on February 23, 2015. Dckt. 72. 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 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.

20. 14-32254-E-13 DPC-2 | **ZADIE DAVIS** | **Pro Se** | **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK** | **2-4-15 [27]**

Final Ruling: No appearance at the March 3, 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.

21. 14-32254-E-13 ZADIE DAVIS **OBJECTION TO CONFIRMATION OF**
PPR-1 **PLAN BY BANK OF AMERICA, N.A.**
1-29-15 [24]

Final Ruling: No appearance at the March 3, 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.

22. 14-24258-E-13 BARNEY GAXIOLA **MOTION TO CONFIRM PLAN**
AEB-6 **Andrew Bakos** **1-15-15 [105]**

Final Ruling: No appearance at the March 3, 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, 47 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 May 8, 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.

23. 10-40964-E-13 EDDIE/MELISSA BERENGUE MOTION TO SELL
RAC-10 Richard Chan 2-5-15 [162]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. By the court's calculation, 26 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Motion to Sell Property is granted.

The Bankruptcy Code permits the Eddie and Melissa Berengue, Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303.

A review of the Proof of Service shows that the Debtor failed to serve David Cusick, the Chapter 13 Trustee. While the Trustee is a necessary party to be served, the Trustee filed a response to the instant Motion. Therefore, since it appears that the Trustee received notice of the Motion, the court waives this defect in service.

Here Movant proposes to short sell the "Property" described as follows:

A. 2543 Amelia Earhart Ave., Sacramento, California

The proposed purchaser of the Property is Vanessa Fontana and Manuel Ramirez and the terms of the sale are:

1. Purchase price of $226,000.00.

2. Initial deposit of $2,000.00.

3. First loan in the amount of $180,000.00 at 5.00% interest rate

4. Balance of down payment to be deposited with escrow holder is $43,200.00

5. This is an arms length transaction.

6. The Debtors will not relinquish title to or possession of the Property prior to payment in full of the purchase price.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on February 10, 2015. Dckt. 170. The Trustee states that Natomas Field Community Association's Proof of Claim No. 18 claims an amount of $1,628.37. As of February 10, 2015, the Trustee has disbursed a total of $1,427.60 to this claim, which leaves a remaining balance of $200.77 on this claim. The Trustee is unsure if Debtor is trying to move the remaining balance of $200.77 to be paid through escrow, rather than through the Trustee as provided for in the plan.

WELLS FARGO BANK, N.A.'S NON-OPPOSITION

Wells Fargo Bank, N.A. filed a non-opposition to the instant Motion on February 17, 2015. Dckt. 172. Wells Fargo Bank, N.A. state that it does not oppose the Motion on the condition that the following items are included in the order:

1. Wells Fargo Bank, N.A. non-opposition is contingent upon its secured claim being paid off in full or in accordance with any approval as authorized by Wells Fargo Bank, N.A.

2. In the event that the sale of the Property does not take place, Wells Fargo Bank, N.A. shall retain its lien for the full amount due under the Loan; and

3. Each party shall bear their own attorneys' fees and costs incurred regarding the instant Motion.

DEBTORS' RESPONSE

The Debtors filed a response on February 19, 2015. Dckt. 175. The Debtor responds by saying that the Debtors are not trying to move the pre-petition claim of Natomas Field Community Association and wish to have the Trustee

disburse the remaining balance of $200.77 to creditor.

DISCUSSION

A review of the proposed short sale of the Property appears to be in the best interest of the Debtor, the estate, and creditors. It provides for the satisfaction of certain liabilities.

The Debtors' supplemental response appears to satisfy the Trustee's concern as to the treatment of Natomas Field Community Association. Since the Debtors state the intention is for that creditor to be continued to be paid out through the plan, the Trustee's concern is resolved.

As to Wells Fargo Bank, N.A.'s conditional non-opposition, the court will not piecemeal together an order based on the request of the creditor. It appears that these are boilerplate inserts that may or may not apply to the instant case. Instead, it appears that Wells Fargo Bank, N.A. is seeking to have the court insert specific order language that is more akin to a comfort order as to its rights. Specifically, the court does not see any request for attorney fees yet Wells Fargo Bank, N.A. wants the order to reflect that "[e]ach party shall bear their own attorneys' fees and costs incurred regarding the instant Motion."

The court approves the sale pursuant to 11 U.S.C. § 363(b). It is up to Wells Fargo Bank, N.A., and any other lien holder, to properly address their lien, obligations under any short sale agreement, and properly protect its interests. FN.1.

FN.1. When parties request gratuitous provisions in orders they raise the issue of whether in the thousands of other orders issued by the court that do not contain such provisions that such events have occurred. If Wells Fargo Bank, N.A. believes that such provisions in an order approving a sale pursuant to 11 U.S.C. § 363(b) are necessary and proper, then it may be an admission by the bank that in all other sales approved the Bank lost its lien when the court approved the sale.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Eddie and Melissa Berengue, 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 Eddie and Melissa Berengue, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Vanessa Fontana and Manuel Ramirez or nominee ("Buyer"), the Property commonly known as 2543 Amelia Earhart Ave., Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $226,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 165, and as further provided in this Order.

2. The sale proceeds shall first be applied to closing costs, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

24. 14-30265-E-13 FRANK/MARINA YAVROM
DPC-1 Timothy Walsh

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
11-24-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. By the court's calculation, 50 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

AN.1. The Trustee stated in the Objection that it was a Motion to Value Collateral of National Bank. However, the only Motion to Value in this case is a Motion to Value the Collateral of PNC Bank, N.A. Dckt. 17. The court assumes that this is the Motion to Value the Trustee is referencing.

JANUARY 13, 2015 HEARING

At the hearing, the court continued the hearing to March 3, 2015 at 3:00 p.m. to allow the Debtor the opportunity to re-file a Motion to Value given that Home Expo Financial Inc. filed Proof of Claim No. 5 in connection with the lien. Dckt. 34.

DISCUSSION

No supplemental pleadings have been filed nor has the Debtor filed a new or amended Motion to Value the secured claim.

The Trustee's objection is well-taken. The Debtor's plan is dependent on the valuation of the line of credit. However, as the court noted in its ruling on the Motion to Value, the court is unable to determine which creditor is the holder of the note. The court denied the Motion after having given the Debtor the opportunity to file an amended Motion to Value. Without the Motion to Value being granted, the plan is not feasible.

Therefore, because the Motion to Value has been denied, 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. 14-30265-E-13 FRANK/MARINA YAVROM **AMENDED OBJECTION TO**
HDP-1 Timothy Walsh **CONFIRMATION OF PLAN BY HOME EXPO FINANCIAL, INC.**
1-23-15 [39]

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's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Home Expo Financial, Inc., successor in interest to PNC Bank ("Creditor") opposes confirmation of the Plan on the basis that:

1. The plan does not provide for full payment of the Creditor's claim;

2. The plan does not provide for the ongoing post-petition obligation of the Debtors as to the Creditor and the subject property.

3. Debtor's plan provides for avoidance of Creditor's lien. Creditor has objected to that motion.

4. Creditor objects to the plan as it fails to comply with 11 U.S.C. § 1322(b)(3) and 11 U.S.C. § 1322(a)(5) and cannot be confirmed.

The Creditor's objections are well-taken.

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

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

Furthermore, the plan is contingent on the Motion to Value being granted. At the March 3, 2015 hearing, the court denied the Motion. Because the Motion was denied, the plan is not feasible as drafted.

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 Home Expo Financial, Inc., successor in interest to PNC Bank having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

26. 14-30265-E-13 FRANK/MARINA YAVROM
TJW-1 Timothy Walsh

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

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

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

Below is the court's tentative ruling.

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

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

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

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

The Motion filed by Frank and Marina Yavrom ("Debtor") to value the secured claim of PNC Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 3005 Puffin Circle, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $300,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). AN.1.

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

relief is the valuation of a specific creditor's secured claim.

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

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

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

OPPOSITION

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

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

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

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

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

JANUARY 13, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 to be heard in conjunction with the Objection to Confirmation. Dckt. 36. No supplemental pleadings in connection to the instant Motion has been filed.

DISCUSSION

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

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

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

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

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

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

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

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

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

Declaration, Dckt. 27.

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

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

Therefore, the Motion is denied without prejudice.

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

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

27. 15-20065-E-13 GARY SHIMOTSU **MOTION TO AVOID LIEN OF**
ET-1 Matthew Eason **INTERNAL REVENUE SERVICE**
2-3-15 [14]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Internal Revenue Service, and Office of the United States Trustee on February 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Lien is denied.

This Motion requests an order avoiding the preferential lien of Internal Revenue Service ("Creditor") against property of Gary Shimotsu ("Debtor") commonly known as 9893 Nestling Circle, Elk Grove, California (the "Property").

Creditor acquired a lien against the Debtor's Property when it recorded a Notice of Federal Tax Lien in Sacramento County on November 20, 2014. Exhibit 1, Dckt. 17. The Federal Tax Lien were for the tax period ending December 31, 2012, in the total amount of $94,878.34.

The Debtor alleges that the Debtor was insolvent at the time the lien attached on November 20, 2014. Dckt. 16.

The Debtor argues that pursuant to 11 U.S.C. § 547(b) the Debtor has standing to avoid a preferential transfer lien.

CREDITOR'S OBJECTION

The Creditor filed an objection to the instant Motion on February 12, 2015. Dckt. 27. The Creditor argues that 11 U.S.C. § 547(c)(6) provides for an exception that provides that the fixing of a statutory lien is not subject to the preferential avoidance rule. The filing of the Notice of Federal Tax Lien is not a preferential transfer.

APPLICABLE LAW

11 U.S.C. § 547(b) provides:

> (b) Except as provided in subsections (c) and (I) of this section, the trustee may avoid any transfer of an interest of the debtor in property--
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made--
>
> (A) on or within 90 days before the date of the filing of the petition; or
>
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if--
>
> (A) the case were a case under chapter 7 of this title;
>
> (B) the transfer had not been made; and
>
> (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

However, 11 U.S.C. § 547(c) provides exceptions to subsection (b) for preferential transfers that may not be avoided. In relevant part, the subsection provides:

> (c) The trustee may not avoid under this section a transfer–.
> . .
>
> (6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title.

Section 545 deals with the trustee's power to avoid statutory liens. The section provides:

> The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien--
>
> (1) first becomes effective against the debtor--
>
> (A) when a case under this title concerning the debtor is commenced;
>
> (B) when an insolvency proceeding other than under this title concerning the debtor is commenced;
>
> (C) when a custodian is appointed or authorized to take or takes possession;
>
> (D) when the debtor becomes insolvent;
>
> (E) when the debtor's financial condition fails to meet a specified standard; or
>
> (F) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;
>
> (2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists, except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law;
>
> (3) is for rent; or
>
> (4) is a lien of distress for rent.

DISCUSSION

Federal tax lien authority is found under 26 U.S.C. § 6321-6323. Under 11 U.S.C. § 547(c)(6), statutory liens cannot be avoided as preferences. A tax lien is not avoidable if it has been perfected according to applicable tax law and regulations at the time a bankruptcy petition is filed. *In re Hudgins*, 967 F.2d 973 (4th Cir. 1992).

The Creditor's objection is well-taken. The code section language of both §§ 545 and 547 plainly disallow a trustee, let alone a debtor, from avoiding a federal tax lien. The instant tax lien was perfected by recordation on November 28, 2014, approximately two months before the instant bankruptcy petition was filed. The Debtor does not provide any argument or citation as to why or how the Debtor can avoid the Creditor's federal tax lien. The Debtor does not argue how this is a preferential treatment or how, under the plain language of the code sections, the court may avoid the Internal Revenue Service lien.

Based on the following, the Motion is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Lien 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 is denied.

28. 10-34373-E-13 LISA PACKER
MRL-1 Jeremy Heebner

MOTION FOR COMPENSATION FOR MIKALAH RAYMOND LIVIAKIS, DEBTOR'S ATTORNEY
2-2-15 [61]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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 February 3, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 dismissed without prejudice.

Mikalah Raymond Liviakis, the Attorney ("Applicant") for Lisa Packer, Debtor 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 28, 2015. Applicant requests fees in the amount of $826.50.

The instant case was filed on May 31, 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. 26. 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, $1,500.00 of which was paid prior to the filing of the petition. The balance of $2,000.00, 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 $57.00 per month upon confirmation.

The court has addressed a similar issue with counsel in another case in which he has substituted for the same prior counsel.

On February 26, 2015, Applicant filed a "Notice of Withdrawal" of the motion. The court reads this as a statement that Applicant is reviewing how the no-look fee previously allowed in a case with original counsel should be allocated between the original counsel and substitute counsel.

The court construing the Notice of Withdrawal as an *ex parte* request to dismiss the Motion without prejudice, Applicant having the right to request dismissal of the Motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041. The dismissal is consistent with the response of the Chapter 13 Trustee and in providing Applicant and the original counsel to determine the proper way to address the attorneys' fees properly allowable in this case.

The *ex parte* request is granted, the Motion is dismissed 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 First Application for Attorneys' Fees filed by Mikalah Liviakis ("Movant") having been presented to the court, the court concluding that Movant has requested that the Motion be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 69, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

29. 10-46774-E-13 MAURY/ELIZABETH TOVEY MOTION TO MODIFY PLAN
PLC-3 Peter Cianchetta 1-28-15 [57]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

The Debtors having filed a new Motion to Confirm the Modified Plan (Dckt. 65) and a Modified Plan (Dckt. 69) on February 9, 2015, the new plan and motion being consistent with the opposition filed to the instant Motion, the court interpreting the new filings 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 Modify Plan (Dckt. 57), and good cause appearing, **the court dismisses without prejudice the Debtors' Motion to Modify Plan (Dckt. 57).**

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 Modify Plan having been filed by the Debtors, the Debtors having filed a new Motion to Modify Plan (Dckt. 65) and plan (Dckt. 69) which the court construes as an ex parte motion to dismiss the instant Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed without prejudice.

30. 14-20874-E-13 TARILYN ELLIOTT **MOTION TO MODIFY PLAN**
CA-3 Michael Croddy **1-16-15 [36]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 16, 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 deny the Motion to Confirm the Modified Plan.

Tarilyn Elliott ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 16, 2015. Dckt. 36.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 17, 2015. Dckt. 41. The Trustee objects on the following grounds:

1. The amount of post-petition arrears due appears higher than in the plan. The proposed modified plan lists post petition arrears to be paid as class 1 creditor in the amount of $2,580.12. According to the Trustee's records, the post-petition arrears amount is $2,880.12. In addition, section 2.08(b)(3) of the modified plan lists partial plan payments shall include any late charge. The Debtor has failed to provide for late charges and does not address post petition arrears in

the additional provisions of the modified plan. This is the same $300.00 discrepancy raised in the objection to the prior proposed plan. Dckt. 27.

DISCUSSION

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

The Trustee's objection is well-taken. It appears that once again the proposed plan fails to account for the total amount of post-petition arrears, including late charges. Because the plan fails to properly account for the full amount of post-petition arrears, the court cannot confirm the plan.

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

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

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

31. 11-44677-E-13 RONALD/MELBA BRINGAS MOTION TO INCUR DEBT
DEF-8 David Foyil 2-12-15 [72]

Tentative Ruling: The Motion to Incur Debt 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 creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Incur Debt 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 Incur Debt is denied without prejudice.

The motion seeks permission to purchase a 2015 Mazda 3, which the total purchase price is $21,835.35, with monthly payments of $395.67. The purchase requires a down payment of $4,000.00, leaving a total of $17,835.35 to be financed.

A review of the Proof of Service shows that the Debtor failed to serve David Cusick, the Chapter 13 Trustee. While the Trustee is a necessary party to be served, the Trustee filed a response to the instant Motion. Therefore, since it appears that the Trustee received notice of the Motion, the court waives this defect in service.

TRUSTEE'S RESPONSE

The Trustee filed a response on February 20, 2015. Dckt. 78. The Trustee states that while he realizes that the Debtors' budget can support the proposed auto payments, the Debtors do not provide any evidence that they attempted to acquire a better deal. Specifically, the Debtors are requesting to purchase the vehicle with an annual percentage rate of 16.62%. The Debtors do not provide any information as to whether the Debtors attempted to obtain a lower interest rate, checked more than one dealer, looked at more than one mode, or considered a used vehicle.

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 debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor own: (1) 2000 Dodge Durango; (2) 2002 Honda Civic; (3) 2006 Harley Davidson; (4) 2007 Scion TC. In the Debtors' Motion and Declaration, all the Debtors state as to why these vehicles are no longer viable is "[t]he debtors former vehicles are not reliable, therefore threatening their income due to transportation difficulties." Dckt. 72 and 74.

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge — 16.62%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a brand new car and attempt to borrow money at a 16.62% interest rate.

Given the Debtors' failure to provide testimony as to the efforts to find a vehicle with a lower interest rate or why a less expensive used car is not satisfactory, 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.

32. 14-23079-E-13 DONALD/JULIENNE WOODWARD MOTION TO AVOID LIEN OF CACH, LLC
SDH-4 Scott Hughes 1-28-15 [50]

Final Ruling: No appearance at the March 3, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on January 28, 2015. By the court's calculation, 34 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 Cach, LLC ("Creditor") against property of Donald and Julienne Woodward("Debtor") commonly known as 554 Meadow View Drive, Susanville, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,790.89. An abstract of judgment was recorded with Lassen County on November 29, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $130,000.00 as of the date of the petition. The unavoidable consensual liens total $210,622.00 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 § 704.950 in the amount of $100,000.00 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 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 Cach, LLC, California Superior Court for Lassen County Case No. JC55869, recorded on November 29, 2012, Document No. 2012-06262 with the Lassen County Recorder, against the real property commonly known as 554 Meadow View Drive, Susanville, 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.