

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

March 15, 2016 at 3:00 p.m.

1. [15-24401](#)-E-13 CINDY GRAHAM OBJECTION TO CLAIM OF INTERNAL
SJS-4 Scott Johnson REVENUE SERVICE, CLAIM NUMBER 7
1-18-16 [[57](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on January 18, 2016. By the court's calculation, 57 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 7 of Internal Revenue Service is sustained.

Cindy Graham, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Internal Revenue Service ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority in the amount of \$3,678.12. Objector asserts that the Proof of Claim shows Objector's 2014 federal income tax returns as "Unassessed - No Return." However, the Objector asserts that she has filed her 2014 federal tax returns, which show approximately \$742.00 of priority debt owed. The Objector states that she has added the \$742.00 of priority debt to the 2013 tax and interest due per the Proof of Claim to come to her total priority amount

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due:

Allowed Secured Claim: \$0.00
Unsecured Claim: \$57.34
Priority Claim: \$1,315.98

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on January 21, 2016.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

In the instant case, the Proof of Claim No. 7 filed by the Internal Revenue Service indicates that the Objector's 2014 income tax is "Unassessed-No-Return" and has a default tax amount due of \$3,035.80 and \$11.00 in fees.

Attached to the Objector's Objection is a copy of the Objector's 2014 income tax return, which indicates that the Debtor owes \$742.00 in priority debt.

The Debtor is proposing to correct Proof of Claim No. 7 to include the 2014 priority debt with the 2013 priority debt.

Based on the evidence before the court, the objection is sustained and creditor's claim is allowed as:

Allowed Secured Claim: \$0.00
Unsecured Claim: \$57.34
Priority Claim: \$1,315.98

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

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

The Objection to Claim of Internal Revenue Service, Creditor filed in this case by Cindy Graham, 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 objection to Proof of Claim Number 7 of Internal Revenue Service is sustained and the claim is allowed as:

Allowed Secured Claim: \$0.00

Unsecured Claim: \$57.34
Priority Claim: \$1,315.98

2. [15-24401-E-13](#) CINDY GRAHAM MOTION TO MODIFY PLAN
SJS-5 Scott Johnson 1-18-16 [[64](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 18, 2016. By the court's calculation, 57 days' notice was provided. 35 days' notice is required.

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

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

Cindy Graham ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 18, 2016. Dckt. 64.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 29, 2016. Dckt. 76. The Trustee opposes the Motion on the following grounds:

1. The Debtor may not be able to make the plan payments or the

plan is not the Debtor's best efforts. The Trustee argues that the Debtor proposes to surrender the real property commonly known as 501 Gibson Drive #1614, Roseville, California. The confirmed plan calls for the mortgage to be paid through the plan. The Debtor is proposing to continue to pay homeowner's association dues but surrender the real property. The Debtor is below median income and claims a \$600.00 expense per month in rent. According to the Trustee's records, the Debtor's address remains that of the real property and there is no change of address provided. The Trustee argues that either the Debtor has not moved, in which case \$1,800.00 in rent has not been incurred, or the Debtor has not filed a change of address.

2. The Debtor may not be able to make the plan payments or the plan is not the Debtor's best efforts. According to the Debtor's amended budget, it appears that the Debtor has increased personal care products and services from \$0.00 to \$100.00. Additionally, the Debtor has increased her transportation expenses from \$100.00 to \$250.00. The Trustee argues that this total change of \$250.00 is in the same amount that was previously objected to by the Trustee but was classified as "Homeowner's association or condominium dues." The Trustee states that the Debtor has not explained if they are currently incurring these debts, are still paying homeowner's dues as proposed in the previous plan, or doing something else.
3. Under the proposed plan, the Debtor is delinquent \$530.00 in plan payments.
4. The plan exceeds the maximum time allowed. The Trustee calculates that the plan will take approximately 70 months if the Debtor's Objection to Claim No. 7 is overruled.
5. The plan no longer provides for secured creditor ATC Assessment Collection Group, LLC/The Reserves at the Galleria Owners Association. Under the confirmed plan, the creditor was listed as a Class 2 secured purchase money security interest. The Trustee dates that the creditor filed a secured claim on June 17, 2015 in the amount of \$7,647.85.

DISCUSSION

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

The Trustee's objections are well-taken. Of note, this is the Debtor's third proposed modified plan. The Trustee's first two objects are the same he had when the Debtor proposed his second modified plan. Dckt. 51.

As to the Trustee's first objection, the intention of the Debtor, the proposed plan, and the Debtor's financial reality does not appear to correlate. Namely, the Debtor appears to have either moved and surrendered the real property or has remained which is in conflict with the Debtor's intention of surrendering. The court's review of the instant plan and the previously confirmed plan highlights that there is a discrepancy in the proposed treatment

which raises concerns over whether the schedules filed by the Debtor accurately reflect the Debtor's financial situation. The reality of the Debtor, which appears to still be occupying the residence she is proposing to surrender, and the indication in the plan that she is surrendering the plan, makes it impossible to determine if the plan is feasible or viable when the court is unsure of the actual financial situation of the Debtor.

As to the Trustee's second objection, the court is also concerned about the potential bad faith in the proposed changes to the expenses. It does seem odd to the court that the exact amount of the homeowner's association dues that led to the denial of the previous plan has been recalculated into the budget, just in the form of other expenses. The Debtor does not provide the court with any explanation as to why both personal care and transportation increased from the prior budget to the instant. The court concurs that the Debtor's plan does not appear to be her best efforts.

As the court mentioned in the civil minutes from the prior denial of the proposed plan:

The proposed plan does not appear to increase any payments once the property is surrendered, if it has not been surrendered to date. Without the Debtor's Schedule J properly reflecting real and actual expenses, the court, Trustee, and any other party in interest cannot determine whether the Debtor is committing all of her disposable income as well raises concerns over whether the proposed Schedules and plan are a proper reflection of the Debtor's financial reality.

Dckt. 32. None of the pleadings provided by the Debtor has provided evidence that this concern has been rectified.

As Debtor's counsel is well aware, making statements under penalty of perjury in federal court is a significant act. Here, Debtor has obtained prior confirmation of a Chapter 13 Plan testifying under penalty of perjury as to her income and expenses. First, on May 29, 2015, Debtor stated under penalty of perjury that her monthly expenses were \$874.00. Schedule J, Dckt. 1 at 27-28. She did this, knowing that the court, Creditors, and the Chapter 13 Trustee would rely on such statements under penalty of perjury with respect to her good faith filing of this case, the prosecution of a Chapter 13 Plan, and the ability to perform a plan. These expenses did not include anything for a mortgage or rent payment, which was provided for in her Original Chapter 13 Plan. Dckt. 5. Her net monthly income computed on Schedule J, \$1,030.00, was exactly the amount she needed to fund a Chapter 13 Plan which paid Debtor's mortgage, car payment, her counsel, and modest tax debt, and leaving a 0.00% dividend for creditors holding general unsecured claims.

The court, relying on the truthfulness and accuracy of the information provided under penalty of perjury on Schedule J, confirmed the Debtor's Original Chapter 13 Plan. Order, Dckt. 18. The order confirming the plan was filed on July 28, 2015.

Though the court, relying on the accuracy of the information on Schedule J, confirmed the plan, merely fourteen days after the order confirming the plan was filed, Debtor filed an amended Schedule J and a first modified plan. On Amended Schedule J, Dckt. 19, Debtor's expenses balloon to \$1,647.00

a month adding in \$600.00 for a rent or mortgage payment. In the fourteen days since the court confirmed the Chapter 13 Plan, Debtor stated that her food and household supplies expense had increased from the \$131.00 a month, stated under penalty of perjury on Original Schedule J, to \$365.00 a month on Amended Schedule J. Debtor offers no explanation as to why her original expense information under penalty of perjury was misstated in innocent error or of any changes in events which warrant an almost 300% increase in that expense. Declaration, Dckt. 23. Debtor does state that she now, fourteen days after the court confirmed her original plan, Debtor states that she is not going to make any mortgage payments. *Id.*

Under the proposed First Modified Plan, Debtor will make her car payment, pay her attorney \$3,006.00, and pay \$1,316.98 in priority taxes, again leaving a 0.00% dividend. First Modified Plan, Dckt. 24.

The court denied confirmation of the First Modified Plan. Order, Dckt. 34. The court denied confirmation for several reasons. First, the Debtor was at least \$225.00 delinquent in plan payments. While providing information under penalty of perjury on Amended Schedule J and her Declaration in support of confirmation of the First Amended Plan, that she had the financial ability to make the minimal \$225.00 a month plan payment, the Debtor immediately defaulted in the plan payments. Secondly, as discussed above, the Debtor was claiming a phantom mortgage payment as an expense, the First Modified Plan not providing for any payment on the mortgage - thereby allowing her to live rent/mortgage free until an eventual foreclosure took place. Civil Minutes, Dckt. 32.

Undeterred, Debtor and her counsel filed a proposed Second Modified Chapter 13 Plan and a Second Modified Schedule J in which the Debtor again states her expenses under penalty of perjury. On the Second Amended Schedule J Debtor states her monthly expenses are \$1,647.00, which leaves \$230.00 a month to fund a plan. Dckt. 41. On Second Amended Schedule J, Debtor continues to maintain the phantom monthly rent/mortgage payment of \$600.00. But Debtor deletes the theretofore necessary \$250.00 a month homeowner's association dues which had been included in the Original and First Amended Schedules J. Debtor then "uses" part of the no longer necessary dues to increase here prior adequate transportation expense by \$150.00 from Original Schedule J. Debtor also uses the other \$100.00 of the dues expense to increase her personal care products expense by \$100.00 a month.

Debtor's declaration in support of confirmation of the Second Modified plan is a copy of her prior declarations. Dckt. 44. Interestingly, the page of the declaration in which she purports to now give accurate financial information under penalty of perjury (for the expense changes), is illegible and in a different font than the other pages of the declaration. From what the court can make out, part of her explanation under penalty of perjury is that from May 2015 to an unstated date on the declaration, Debtor "realized" that she needed an additional \$100.00 a month for gas. No explanation is provided for how Debtor miscomputed the fuel expense on multiple prior statements under penalty of perjury or how the fuel expense became higher as gas prices dropped through 2015.

The court denied confirmation of the Second Modified Plan. Order, Dckt. 56. In denying confirmation, the court noted Debtor and Debtor's counsel's attempts to just run the prior denied attempts at confirmation again

by the court. Civil Minutes, Dckt. 54.

Moving into 2016, Debtor and Debtor's counsel against take another run at confirming a Chapter 13 Plan. Debtor also objects to the Claim of the Internal Revenue Service, asserting that she has "now" filed her 2014 tax return, and her 2014 and 2013 priority tax debt is only \$1,315.98. Motion, Dckt. 57.

In support of confirmation, Debtor files (at 6:06 p.m. on January 18, 2016) her Third Amended Schedule J, stating her expenses under penalty of perjury. Dckt. 61. Now, with this fourth statement of expenses under penalty of perjury, Debtor's expenses are \$1,612.00. This would leave her \$265.45 to fund a plan. *Id.* at 5. This decrease in expenses is based on Debtor now stating under penalty of perjury that her food and household supplies expenses are reduced to \$330.00 a month (without any explanation for the increases and decreases over the short period of time in this case). Debtor also continues to state the phantom \$600.00 rent/mortgage expense.

At 6:09 p.m. on January 18, 2016, a Fourth Amended Schedule J as filed by Debtor. It appears identical to the Third Amended Schedule J.

Debtor also filed her Third Modified Chapter 13 Plan. Dckt. 65. This plan requires payments of \$265.00 a month. Through the Plan Debtor will make her car payment, pay Debtor's attorney's fees of \$3,0905.00, pay, \$1,550.00 in priority taxes, and make a 0.05% dividend to creditors holding general unsecured claims (which on the \$29,092 in unsecured claims stated in the plan would aggregate to a total unsecured dividend of \$14.54).

Debtor's declaration in support of confirmation of the Third Modified Chapter 13 Plan is a rote recitation from the prior declarations. 67. She offers no significant personal knowledge testimony, but merely conclusions and repeat what her attorney has told her.

Debtor and Debtor's counsel have demonstrated in this case two things: (1) truth is an elusive concept for Debtor and (2) Debtor's counsel will file facially inaccurate declarations and financial statements providing information under penalty of perjury by the Debtor. Looking that the financial information on the various Schedules J filed by Debtor, the information is facially deficient. Without any explanation or evidence, Debtor purported to tell the court under penalty of perjury (and her attorney filed subject to the certifications under Fed. R. Bankr. P. 9011) that:

(1) her monthly food and housekeeping supplies expense was \$161.00 a month (which, if allowing \$25 a month for toilet paper, soap, shampoo, dish soap and the like, would leave \$136.00 for food - which equals \$1.51 per meal over a thirty-day month);

(2) her transportation expense (registration, repairs, maintenance, and fuel) were \$100.00 a month;

(3) her **clothing** expense over the five years of the plan was **\$0.00 a month**;

(4) her **medical and dental expenses** over the five years of the plan was **\$0.00 a month**; and

(5) her **personal care products expense** over the five years of the plan was **\$0.00 a month**.

Dckt. 1 at 28.

These financial myths were perpetuated under penalty of perjury by Debtor in her subsequent statements under penalty of perjury. Then they were compounded by Debtor and Debtor's counsel listing a phantom monthly expense of \$600.00 for rent or mortgage when none actually exists - the Debtor failing to make plan payments and the Plan providing since the First Modified Plan (filed fourteen days after confirmation of the Original Plan) to surrender Debtor's home and not make any plan payments to that creditor.

Debtor and Debtor's counsel have demonstrated that this case has not and is not being prosecuted in good faith. At best, it appears to be a plan (supported by false statements under penalty of perjury) which exists solely to try and shovel some money to Debtor's counsel - irrespective of the truth. More charitably, it might be said that Debtor's counsel was merely doing what Debtor wanted to do, and believed that turning a blind eye to the truth was being a "zealous advocate" for the Debtor. To paraphrase attorney Brendan Sullivan, Jr.'s retort to Congress during the Oliver North hearing, "an attorney is not a potted plant to be trotted out by a client for show." When the Debtor is acting clearly in a manner which makes no financial sense or outside what is permitted under the Bankruptcy Code, it is the attorney's obligation to guide the client within the law, not assist the client in making false statements under penalty of perjury.

The Debtor's bankruptcy case is now built on the mound of financial skeleton false statement which demonstrate there is no confirmable plan which Debtor can perform in this case. This mound of financial bones has not been built by an innocent, misguided pro se debtor, but carefully constructed with the assistance of counsel. This further hardens the court's conviction that there is no good faith prosecution of this case, there is no good faith plan proposed in this case, and there is no ability of the Debtor to prosecute this case in good faith.

The basis for the Trustee's third objection is that the Debtor is \$530.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's fourth objection, Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 70 months if the Debtor's Objection to Claim No. 7 is overruled. On March 15, 2016, the court sustained the Debtor's objection. Therefore the Trustee's objection is overruled.

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

secured claim.

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

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

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

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

Here, the secured claim is provided for and the creditor did file a Proof of Claim. Class 3 Treatment provides for the surrender of the collateral, the Debtor's home, to the homeowners association. Proof of Claim No. 5 filed by the homeowners association states that it is for association assessments.

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

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

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

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

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

3. [15-28301](#)-E-13 RICHARD/PAULA CUMMINGS CONTINUED OBJECTION TO
APN-1 Mary Ellen Terranella CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
12-7-15 [[14](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

Local Rule 9014-1(f)(2) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Wells Fargo Bank N.A., dba Wells Fargo Dealer Services, the Creditor, opposes confirmation of the Plan on the basis that the plan does not provide for the full amount of the Creditor's secured claim. The Debtor is trying to value the secured claim of the Creditor without filing a Motion to Value.

On December 29, 2015, the Debtor filed a Motion to Value Collateral of the Creditor. Dckt. 24. The Motion is set for hearing on January 26, 2016 at 3:00 p.m.

At the hearing on January 12, 2016, due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection was continued to 3:00 p.m. on January 26, 2016.

At the hearing on January 26, 2016, the court continued the Motion to Value Collateral of the Creditor to 3:00 p.m. on March 15, 2016 to allow the parties the opportunity to gather appraisals on the collateral.

On February 24, 2016, based on the stipulation of the parties, the court issued an order valuing Creditor's secured claim at \$13,750.00. Dckt. 55. The order also provided:

IT IS HEREBY FURTHER ORDERED that Debtor shall amend the Chapter 13 Plan and accompanying Schedules, as and if necessary, to ensure that the same conform with the terms set forth herein.

Id.

AMENDED PLAN FILED ON MARCH 8, 2016

On March 8, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for April 26, 2016. Motion and Notice, Dckts. 59 and 60.

The filing of an amended plan is a de facto withdrawal of the current plan to which the objection was filed.

In light of the stipulation, the order valuing Creditor's secured claim, and the Debtor filing an amended Chapter 13 plan, the Objection is sustained.

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

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

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

IT IS ORDERED that Objection to Confirmation the Plan is sustained and the plan is not confirmed.

4. [15-28301-E-13](#) RICHARD/PAULA CUMMINGS CONTINUED OBJECTION TO
DPC-1 Mary Ellen Terranella CONFIRMATION OF PLAN BY DAVID
P. CUSICK
12-9-15 [[20](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 9, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection to

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

1. The Debtor has failed to file tax returns during the 4-year period preceding the filing of the instant case, specifically, 2012, 2013, and 2014.
2. The Debtor's plan relies on the Motion to Value Collateral of Wells Fargo Dealer Services.

On December 29, 2015, the Debtor filed a Motion to Value Collateral of the Creditor. Dckt. 24. The Motion is set for hearing on January 26, 2016 at 3:00 p.m.

At the hearing on January 12, 2016, due to the interconnectedness of the instant Objection and the Motion to Value, the instant Objection was continued to 3:00 p.m. on January 26, 2016.

At the hearing on January 26, 2016, the court continued the Motion to Value Collateral of the Creditor to 3:00 p.m. on March 15, 2016 to allow the parties the opportunity to gather appraisals on the collateral.

On February 26, 2016, the Trustee filed a supplement to his objection. Dckt 56. The Trustee states that since the objection was filed, Debtor has filed their missing tax returns and the First Meeting of Creditors has been concluded. However, in light of the stipulation between the Debtor and Wells Fargo Bank, N.A., the Trustee has the following supplemental objections:

1. The Franchise Tax Board filed Proof of Claim No. 4 on December 16, 2015. The claim indicates that the Debtor owes \$10,497.04 in priority tax. The Debtor's plan proposed to pay only \$2,120.00 to the Franchise Tax Board. The claim causes the plan to complete in 66 months.
2. Solano County Tax Collector filed a Proof of Claim No. 2, claiming a secured amount of \$1,571.58. The Debtor's plan provides for the Solano County as a priority claim in Class 5.
3. The change in the plan based on the stipulation of the Debtor and Wells Fargo Bank, N.A. as to the value of its secured claim (\$13,750 with 4.5%) causes the plan to complete in 66 months.

DISCUSSION

The Trustee's objections are well-taken.

While the Trustee's original objections have been resolved, the Debtor having filed the necessary tax returns and the Motion to Value being stipulated, the change in circumstances has raised additional concerns that make the plan unconfirmable.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. Specifically, the plan must provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4). In the instant case, the Debtor's plan fails to provide for the priority claims of Franchise Tax Board. As to the Franchise Tax Board, the Debtor's plan only provides for \$2,120.00 of the \$10,494.04 of the priority claim. Proof of Claim No. 4.

As to the Solano County Tax Collector, the plan improperly classifies its claim as a priority claim when the creditor filed Proof of Claim No. 2 indicating a secured claim of \$1,571.58. This improper classification and the need to provide for the creditor as a secured rather than priority claimant, the plan cannot be confirmed.

In light of the plan improperly listing the claims of Franchise Tax Board and Solano County Tax Collector and the stipulation between Debtor and Wells Fargo Bank, N.A., Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 66 months due to the improper classification of certain claims, the failure of the plan to [provide for the payment in full of the priority claims, and the higher than proposed treatment of Wells Fargo Bank, N.A.. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

AMENDED PLAN FILED ON MARCH 8, 2016

On March 8, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for April 26, 2016. Motion and Notice, Dckts. 59 and 60.

The filing of an amended plan is a de facto withdrawal of the current plan to which the objection was filed.

In light of the stipulation, the order valuing Creditor's secured claim, and the Debtor filing an amended Chapter 13 plan, the Objection is sustained.

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

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

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

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

5. [15-28301](#)-E-13 RICHARD/PAULA CUMMINGS CONTINUED MOTION TO VALUE
MET-1 Mary Ellen Terranella COLLATERAL OF WELLS FARGO BANK,
N.A.
12-29-15 [[24](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

The court having previously granted the Motion to Value Collateral of Wells Fargo Bank, N.A. based on the stipulation filed by the parties (Dckt. 54) valuing the Wells Fargo Bank, N.A.'s secured claim at \$13,7050.00 (Dckt. 55), **the Motion to Value Collateral of Wells Fargo Bank, N.A. is removed from calendar.**

6. [15-29002](#)-E-13 ROBERT CLIFF MOTION TO CONFIRM PLAN
SDH-1 Scott Hughes 1-20-16 [[33](#)]

Final Ruling: No appearance at the March 15, 2016 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 20, 2016. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

The 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 January 20, 2016 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.

7. 15-28605-E-13 JODY/JOY SILVA
CA-02 Michael Croddy

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA
2-29-16 [[28](#)]

Tentative Ruling: The Motion to Value secured claim 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim 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 Santander Consumer USA ("Creditor") is granted and the secured claim is determined to have a value of \$12,415.00.

The Motion filed by Jody and Joy Silva ("Debtors") to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Ford F150 Super Cab ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,450.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred on December 11, 2010, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,834.43.00. The court notes that Debtor claims the balance is \$23,981.44. Dckt. 28 Regardless, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$12,415.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Jody and Joy Silva ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA ("Creditor") secured by an asset described as 2010 Ford F150 Super Cab ("Vehicle") is determined to be a secured claim in the amount of \$12,415.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,415.00 and is encumbered by liens securing claims which exceed the value of the asset.

8. [15-28605-E-13](#) JODY/JOY SILVA
CA-3 Michael Croddy

MOTION TO VALUE COLLATERAL OF
SANTANDER CONSUMER USA
2-29-16 [[33](#)]

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Santander Consumer USA, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 28, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required. However, it does not appear that the lienholder, Quantum3 Group as agent for NCEP, LLC ("Creditor"), has been served.

The Motion to Value secured claim 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 Santander Consumer USA ("Creditor") is denied without prejudice.

The Motion filed by Jody and Joy Silva ("Debtors") to value the secured claim of Santander Consumer USA is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Chrysler Aspen SUV ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,583.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (In

re *Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S OPPOSITION

David Cusick, Chapter 13 Trustee, filed an opposition to the instant Motion to Value on March 2, 2016. Dckt. 38. The Trustee states that the Debtor failed to name the proper creditor in their motion. Proof of Claim 1 filed November 13, 2015 states the creditor is Quantum3 Group LLC as agent for NCEP, LLC. Included with the proof of claim is a Bill of Sale and Assignment from Santander Consumer USA Inc. To NCEP, LLC and other supporting documents.

DISCUSSION

Debtor seeks to value the collateral of "Santander Consumer USA." Dckt 33. However, it does not appear that Santander is the proper creditor or has any claim in the Vehicle. Quantum3 Group as agent for, has filed Proof of Claim No. 1 for NCEP, LLC ("Creditor").

Debtor has not named the Creditor (the person who has the claim for which a controversy exists for determination in this federal court - U.S. Const. Art. III, Sec. 2). Parties whose rights may be affected by a motion must be named in the motion against whom relief is sought and then be properly served with notice that their rights could be affected. Fed. R. Bankr. P. 7004; Local Rule 9014-1. The court will not issue "maybe effective" orders regarding the valuation of an asset only to later have the real creditor come and state that no relief was ever sought against them and no notice was ever provided of a proceeding effecting the creditor's rights and interests.

In light of the Debtor improperly naming the Creditor and the actual Creditor in interest had not been served, 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 Jody and Joy Silva ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

9. [14-26806-E-13](#) ROY/MERLIN BAZA
SDB-1 W. Scott de Bie

MOTION TO MODIFY PLAN
1-25-16 [[20](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 25, 2016. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy 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 25, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

10. [12-21207-E-13](#) JIM LEDESMA CONTINUED MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso 10-30-15 [[89](#)]

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 October 30, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

The court's decision is to deny without prejudice the Motion to Confirm the Modified Plan.

Jim Ledesma ("Debtor") filed the instant Motion to Confirm the Modified Plan on October 30, 2015. Dckt. 89. This Motion has a long history of twists and turns over the last five months. The court recounts the entire history in this ruling, with the most recent events in the section near the end of the ruling titled "MARCH 15, 2016 HEARING."

TRUSTEE'S OPPOSITION

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

Motion on November 23, 2015. Dckt. 103. The Trustee opposes on the following grounds:

1. Peter Macaluso, who filed the instant Motion on behalf of the Debtor, has not yet been substituted in as the Debtor's attorney. The Trustee opposes the Motion as the plan is ambiguous where it refers to "Debtor's attorney's fees" to be paid in the plan.
2. The Debtor's proposed plan indicates a 2.00% distribution to unsecured creditors while the Debtor's declaration indicates a 0.00% dividend. The confirmed plan has a distribution of 2.00% and the Trustee has disbursed 2.00% to date. The Trustee opposes the modification if it is attempting to reduce the amount to unsecured claims below what was previously paid.
3. Debtor does not provide an explanation as to why the proposed plan payment is for an amount that is less than his monthly net income or why the Debtor proposes to reduce the plan payment in month 53. Debtor proposes a plan payment of \$79,945.61 total paid in through October 2015 (month 45), \$2,675.00 for 7 months, then \$2,425.00 for 8 months to complete the plan. The Debtor's supplemental Schedule J and J reflects a monthly net income of \$2,765.84. Dckt. 96.
4. The Trustee is uncertain whether the Debtor has the ability to make the plan payments unless other people are paying for some of Debtor's expenses. The Debtor's declaration state that his expenses increased because the Debtor's son now lives with him full time. However, the Debtor's original Schedule J and the supplemental Schedule J indicates a reduction in expenses from \$2,065.66 to \$812.00. Debtor budgets \$0.00 for electricity, heat, natural gas, water, sewer, and garbage collection. The Debtor's childcare expenses remain \$0.00, food was reduced from \$500.00 to \$300.00, and clothing was reduced from \$50.00 to \$40.00. Additionally, the Trustee notes that the Debtor's supplemental Schedule I indicates that the Debtor now is employed by the State of California and receives income from rent or business which was previously not disclosed. The Debtor does not provide explanation of this additional income nor does the Debtor's Statement of Financial Affairs include business information.

DEBTOR'S REPLY

The Debtor, through Mr. Macaluso, filed a reply to the Trustee's opposition on November 30, 2015. Dckt. 106. The Debtor, through Mr. Macaluso, responds as follows:

1. The Debtor allegedly signed the substitution of counsel and that the order approving the substitution is pending court approval.
2. The percentage to unsecured claims was intended to remain 2.00%.

3. The reduction in expenses is due to the assistance of his new girlfriend who has afford to contribute \$1,000.00 to the Debtor towards plan payments. The reply states that the contribution is for the next seven months. The assistance is based on expenses which are projected to increase by a total of \$250.00 after seven months, to include further needs of the children.

DECEMBER 8, 2015 HEARING

At the hearing, the Counsel for Debtor reported that he has been ill, which has delayed his response. Dckt. 108. The court continued the hearing to January 26, 2016 at 3:00. The court ordered that any supplemental pleadings filed by Debtor shall be on or before January 8, 2016, reply if any filed by January 15, 2016.

SUPPLEMENTAL DECLARATION OF DEBTOR

On January 12, 2016, the Debtor filed a supplemental declaration. Dckt. 116. The Declaration states the following:

1. That since the filing of this case, the mother of my children died which has thrown my life into a mess.
2. Since then I have tried to rent my house to my daughter Dominique Parker and her family in which I am receiving \$900.00 per month.
3. I have also moved into my girlfriend's home, Laurie Garcia whom has allowed me to basically live for free and provide \$200 to allow my [sic] to make ends meet and keep my plan active.
4. The sudden changes with my ex-wife's death have made for these major changes so that I can complete my plan as intended.

DECLARATION OF LAURIE GARCIA

Laurie Garcia, the Debtor's girlfriend, filed a declaration on January 12, 2016. Dckt. 117. Ms. Garcia states the following:

1. I understand that my significant other is in a Chapter 13 bankruptcy case and which I am intending to help him for the balance of the plan.
2. That subject to this plan I am willing to provide a home free of charge and \$200 to allow him to meet his needs and the requirements of the plan payments to the Chapter 13 Trustee.
3. That I can afford to make this payment each month for as long as the assistance is needed.

TRUSTEE'S SUPPLEMENTAL RESPONSE

The Trustee filed a supplemental response on January 13, 2016. Dckt. 111. The Trustee begins by stating that the Debtor failed to file any

supplemental papers by the January 8, 2016 deadline.

The Trustee states that at the hearing on December 8, 2015, the Trustee was provided handwritten declarations from the Debtor and two identical handwritten declarations of Debtor's girlfriend, Laurie Green. The Debtor's Declaration states that the Debtor is now renting out his home to family and is moving in with his girlfriend where he will have no rent or utilities. Debtor states that there has been struggles since the death of his children's mother and his son is now with him full time. The Debtor's handwritten declaration indicates that there unexpected expenses such as dental expenses and vehicle expenses.

The Trustee then addresses the status of his own objections in turn:

1. A substitution of attorney was filed on December 14, 2015 (Dckt. 109) and an order granting the substitution was entered December 18, 2015 (Dckt. 110). This resolves the Trustee's objection.
2. The Debtor's reply indicates that the percentage to unsecured creditors remains 2.00%.
3. The Debtor's reply as to the reduction in plan payment indicates that the Debtor's girlfriend is assisting the Debtor in making the plan payments for the next 7 months. The assistance is based on projected expenses which will increase by \$250.00 due to needs of the children. The court found this explanation to be insufficient (Dckt. 108). Namely, the court was concerned that the Debtor did not file a declaration of the girlfriend regarding her willingness to contribute.
4. The Trustee remains uncertain if the Debtor can afford the plan payments. The Debtor's supplemental Schedule J indicates a reduction in expenses from \$2,065.55 to \$812.00. The supplemental Schedule J budgeted \$0.00 for electricity, heat, natural gas, water, sewer and garbage. The Debtor budgeted \$0.00 for education though the Debtor states that he now does actually have these costs. Additionally, the Debtor's food and clothing expenses went down, even though the Debtor now has his son living with him. Furthermore, the Debtor's medical and dental budget has remained \$20.00 even though the Debtor states that his son has braces. The Debtor's supplemental declarations does not sufficiently address the changes in expenses, nor gives specifics as to the renting of his property to his sister.

FEBRUARY 23, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 15, 2016. Dckt. 124.

MARCH 15, 2016 HEARING

TRUSTEE'S SUPPLEMENTAL RESPONSE

On February 29, 2016, the Trustee filed a supplemental response. Dckt. 125. The Trustee states that his objections as to the substitution of attorney and percentage to unsecured creditor have been resolved. However, the Trustee states that the following objections remain:

1. Debtor's modified plan proposes a plan payment in a lesser amount than Debtor's monthly net income and proposes to reduce it further in month 53. The Debtor's Second Supplemental Declaration attempts to resolve this issue by increasing Debtor's food budget from \$300.00 to \$390.00 therein reducing Debtor's monthly net income from \$2,765.84 from his prior Schedule J to \$2,675.84, which now matches the proposed plan payment of \$2,675.00 through May 2016 when the Debtor then proposes it decrease to \$2,425.00 for the balance of the plan. Debtor proposes the reduction in the plan payment for the last 8 months due to a projected increase in the needs of the children. The Trustee asserts that where the Debtor has not filed supplemental Schedules I and J with the court the Trustee questions whether the plan is Debtor's best efforts.
2. The Trustee remains uncertain of Debtor's ability to make the plan payments unless other people are paying some of the Debtor's expenses. The Trustee states in the Debtor's declaration, he indicates that he had increased expenses due to having his son full time, as well as education expenses, braces, and car repairs. Dckt. 91. The Debtor's reply stated his girlfriend provides \$1,100.00 assistance each month towards plan payments, which has reduced his expenses. Dckt. 106. The Debtor's supplemental declaration stated he and his son have moved in with his girlfriend where they live for free plus she provides \$200.00 per month in assistance. Dckt. 116. Debtor also stated he is now renting his house to his daughter at \$900.00 per month. At the time, the Debtor failed to file a supplemental Schedule I to support these assertions.

The Debtor's second supplemental declaration now states his father, Anthony Ledesma, has set up a payment plan and pays for all of his son's orthodontist expenses directly. Debtor also states all his son's tuition expenses are being paid jointly by his father and girlfriend.

Based on the Trustee's remaining objections, the Trustee state he would not oppose the modification of Debtor's plan provided the plan payment remains \$2,675.00 for the balance of the plan, with no step down in the last eight months.

The Trustee argues that the basis for Debtor's proposed modification was due to delinquency. Debtor initially indicated the delinquency was due to increased expenses such as braces for his son and education costs, which now appear to be paid by others.

Lastly, the Trustee asserts that the Debtor rents his house to his daughter for \$900.00 per month, while the mortgage payment paid through the plan is \$1,761.05. Debtor could potentially rent his home out in an amount greater than what he receives from his daughter.

DEBTOR'S SECOND SUPPLEMENTAL DECLARATION

The Debtor filed a second supplemental declaration on March 7, 2016. Dckt. 129. The Debtor states that the payment for his son's braces are being paid for by his father, in pre-set up monthly installments.

The Debtor states that his girlfriend, Laurie Garcia, has taken both the Debtor and his son into her home and has supported them financially. The Debtor states that his girlfriend and his father are jointly making the payments for his son's high school tuition. The Debtor further indicates that his father takes care of the Debtor's son while the Debtor is at work.

The Debtor states his payments are set at \$2,675.00 and his budget reflects that he can make this payment until the plan. The Debtor states he understands that the plan pays the mortgage payment, cures the arrears, pays Sacramento Municipal Utility District, and provides 2% dividend to the Debtor's unsecured creditors.

DECLARATION OF ANTHONY LEDESMA

On March 7, 2016, Anthony Ledesma, the Debtor's father, filed a declaration. Dckt. 132. Mr. Ledesma declares that he is intending to help the Debtor care for the Debtor's son for the balance of the plan. Mr. Ledesma states that he is willing to provide the Debtor's son tuition and braces.

DEBTOR'S THIRD SUPPLEMENTAL DECLARATION

On March 7, 2016, the Debtor filed a third declaration. Dckt. 133. The Debtor states that the cause for the change is due to the Debtor's ex-wife's death. The Debtor reiterates that he has rented the home, moved in with his girlfriend in order to afford the plan payments. The Debtor that if the court feels that a decrease in payments due to a reasonable anticipated expense such as my son's braces, then my father will take care of the braces claim and have it set up to be billed to him.

The Debtor asserts that the expenses he has filed are correct and any additional expenses that are not listed are being paid directly by the Debtor's father. The income total in assistance between the Debtor's daughter and girlfriend is \$1,100.00 and the tax benefits and credits will offset the lack of equal rent to mortgage payment, including the appreciation of the property presently arising.

DEBTOR'S SUPPLEMENTAL REPLY

On March 7, 2016, the Debtor filed a supplemental reply. Dckt. 134. The reply states that the Debtor has amended Schedule J to correct the needed food of \$390.00 per month to feed both the Debtor and his son. This corrects the disposable income to \$2,675.00 per month.

The Debtor acknowledges in his supplemental declaration that the \$2,675.00 is needed to cash flow the remaining expenses. The Debtor does believe that he can make the remaining 15 months of the plan.

DISCUSSION

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

The Trustee's remaining objections are still well-taken.

Even reviewing the reply filed by Mr. Macaluso, the arguments of counsel as to the expense reduction and the supplemental assistance is insufficient to confirm the plan. The reply states that the Debtor's girlfriend has agreed to contribute to expenses during the next seven months. While the Debtor does provide the declaration of the "girlfriend" which states under penalty of perjury her willingness to contribute to the household, the budget still appears to be inaccurate.

The Debtor and Debtor's father both declare that the Debtor's father is paying for the Debtor's son's braces and tuition. The Supplemental Schedule I filed on November 4, 2015, indicates additional rental income of "\$1,000.00." However, according to the declarations and supplemental replies, the Debtor is receiving \$900.00 from his daughter in rent, then some undisclosed amount from the Debtor's girlfriend. The Debtor's budget once again appears to be premised on "mirage" contributions. The Debtor does everything but directly state that the contributions of the girlfriend and father are just "fill ins" in order to make the plan feasible. The court does not agree with this method of budgeting.

Rather than providing this information at the time the Motion was filed, with accurate declarations and accurate supplemental budgets, Mr. Macaluso, filed a proposed plan premised on contribution from the girlfriend and father and the expected reduction in expenses. This is inappropriate.

However, the Debtor still has not provided an accurate financial budget in order for the court, Trustee, and other interested parties to determine if the plan is feasible. The court will not confirm a plan that is based on rough estimates of the Debtor's finances. The Debtor's budget does not account for the girlfriend's contribution nor his daughter's rental of his property. These additional sources of income come to at least \$1,000.00 a month that is not reported in the Debtor's schedules.

Debtor and counsel have chosen, rather than provide a clear statement of all income and expenses in one statement to spread them over a series of supplemental declarations. Debtor and counsel have chosen (which the court infers is not mere inadvertence but an intentional decision) to file a Supplemental Schedule I to clearly state the post-petition change in the Debtor's income.

Debtor and counsel did choose to file a dual Amended and Supplemental Schedule J which appears to incorrectly (and falsely state under penalty of perjury) the Debtor's expenses dating all the way back to the filing of this case on January 22, 2012 [Debtor stating under penalty of perjury that he is amending the Original Schedule J (having checked the box on the form for an amended schedule J), not merely providing a Supplemental Schedule J from a post-petition date going forward]. It appears that for tactical reasons Debtor and counsel could clearly lay out the purported expenses on an Amended and Supplemental Schedule J (Dckt. 131) in one place to make it "clear" for the court, but chose to bury the income information in a series of supplemental declarations.

Debtor and counsel previously have made the dual supplemental amended

schedules, having filed an Amended and Supplemental Schedule I on November 4, 2015. In this, Debtor states that since the commencement of this case in 2012 his gross income has been \$3,331.00. Dckt. 96. This conflicts with Original Schedule I which states under penalty of perjury that as of the commencement of this case in 2012 Debtor's gross income was \$5,832.67 a month. Dckt. 1 at 23. The court is left with the quandary as to which statement under penalty of perjury is true. Both statements made under penalty of perjury were made with the assistance of counsel, so this cannot be a situation where a least sophisticated consumer pro se debtor did not understand the significance between an amended schedule and a supplemental schedule. Based upon the most recent statement under penalty of perjury of Debtor's income in 2012, the plan payments which he purported to be able to make were financially impossible.

Debtor and counsel have demonstrated to the court that the series of supplemental declarations do not provide credible testimony - but confusing testimony intentionally conceived to try and numb the court into submission. Debtor and counsel's unwillingness to provide a supplemental Schedule I convinces the court that (1) the information in the supplemental declarations is inaccurate or (2) Debtor and counsel have no idea, nor good faith belief, as to what is the Debtor's current income.

From the series of Supplemental Declarations, Debtor and the other witnesses appear to be stating the Debtor's income consists of the following:

Source	Income Per Month	Docket
Income Assistance From Laurie Garcia and Daughter	\$1,100.00	Jim Ledesma Third Supplemental Declaration, Dckt. 133
Income Assistance From Debtor's Father	Unstated amount for Tuition and Braces	Anthony Ledesma Declaration, Dckt. 132
Laurie Garcia - \$200 a month assistance	Included in \$1,000 above	Laurie Garcia Declaration, Dckt. 117; Supplemental Declaration of Jim Ledesma, Dckt. 116.
Rental of Home to Daughter (Dominique Parker)	\$900.00	Supplemental Declaration of Jim Ledesma, Dckt. 116. (No evidence that \$900 a month rent is a fair rent for the property. On Amended and Supplemental Schedule I Debtor states under penalty of perjury that the monthly rental income is \$1,100.00)
Gross Income	\$3,331.00	Amended and Supplemental Schedule I, Dckt. 96.

Total Income	\$5,331.00	

On the latest Amended and Supplemental Schedule J, Dckt. 131, Debtor states under penalty of perjury that his monthly expenses are \$902.00 a month. On Amended and Supplemental Schedule I (Dckt. 96), Debtor states under penalty of perjury that his deductions are \$853.16. This would then leave \$3,575.84 in projected disposable income to fund a plan. Thus, it appears that the series of supplemental declarations and briefs have been used as a device to confuse and befuddle the court, Trustee, and creditors as to the real finances of the Debtor.

Conversely, Debtor and counsel may argue, "hey judge, you know what we meant when we said under penalty of perjury that we are filing (subject to the certifications for making statements under penalty of perjury and Fed. R. Bank. P. 9011) amended and supplemental statements, we really just meant supplemental, so take out your judicial eraser and re-write the documents for us." Further, Debtor and counsel may contend, "judge, we know we've said under penalty of perjury that the Debtor's daughter and girlfriend are providing \$1,100.00 in 'assistance' and the Daughter is also renting (and thereby obtaining a significant value) Debtor's house for \$900.00, but just believe that we meant to include the 'rent' (whereby Daughter gets significant value) as being "assistance," so take out your judicial eraser and just ignore what we have said under penalty of perjury."

The court cannot function which such a "judicial eraser" and a "we don't mean what we say under penalty of perjury" attitude of Debtor and Debtor's counsel. This is not the first time that Debtor's counsel has clients who say inconsistent or inaccurate things under penalty of perjury. The court had hoped that Debtor's counsel would take the prior observations to heart and understand that good things do not occur what his client make obviously inaccurate statements or inconsistent statements under penalty of perjury.

The evidence presented by Debtor is not credible, is inconsistent, and shows that Debtor has substantially more income than he and his attorney argue. This evidence may exist because of Debtor and Debtor's counsel pushing a bad position with supplemental declarations, rather than just having the motion denied without prejudice and starting with a clean slate. It may be because Debtor and Debtor's counsel are too busy to focus on getting clear accurate statements under penalty of perjury before the court, and the people assisting them are also too busy, or instructed, to get it right, but instead just get something that supports the preconceived result that Debtor and Debtor's counsel want to get out of (or by) the court.

Therefore, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed. The court denies the motion without prejudice to afford Debtor and counsel to bring a new motion to confirm the plan (supported by clear, accurate evidence and testimony provided under penalty of perjury - the first time) which is now before the court, if that is the correct plan.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the

Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

11. [16-20007-E-13](#) BRENDA GLOVER
DPC-2 PRO Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-17-16 [[24](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on February 17, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the first Meeting of Creditors.
2. The Debtor's plan fails to provide a dividend to unsecured creditors.
3. The Debtor may not be able to make payments under 11 U.S.C. § 1325(a)(6). The Debtor's projected disposable monthly income is a negative \$577.56 and the Debtor's plan payment is \$250.00. Debtor only has income from social security and appears to live

on a fixed income.

4. The Debtor's plan may not comply with applicable law as to the Class 1 debts.
 - a. The Debtor lists in Class 1 SLS with mortgage arrears of \$28,000.00 with an ongoing mortgage payment of \$200.00. Debtor fails to propose a monthly dividend toward the mortgage arrears. On schedule J, Debtor lists expense for first mortgage payment in the amount of \$1,043.00. The Trustee is concerned that Debtor's intent was to include only the mortgage arrears in Class 1 and to continue making ongoing payments directly to the lender.
 - b. The Debtor lists in Class 1 Cottage Park HOA with arrears totaling \$3,900.00 and an ongoing payment of \$50.00. Debtor fails to propose a dividend toward the arrearages. On Schedule J, Debtor lists expense for Homeowner's association in the amount of \$405.00. The Trustee is concerned that Debtor's intent was to include only the mortgage arrears in Class 1 and to continue making ongoing payments directly to the lender.
5. The Debtor's plan proposes to pay interest on arrears to Class 1 creditors SLS and Cottage Park HOA in the amount of 10% interest per year. As according to § 2.08 of the plan, if the interest provision is left blank, 10% is the default interest.
6. The Debtor's plan fails the Chapter 7 liquidation because the Debtor has non-exempt equity totaling \$39,180.00 and does not propose a dividend to unsecured claimants.
7. The Debtor has failed to provide the Trustee with a tax transcript or a copy of her federal income tax return.

The Trustee's objections are well-taken.

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

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); 11 U.S.C. § 1325(a)(9); Fed. R. Bankr. P. 4002(b)(3). The Debtor has failed to provide the tax transcript. This is an independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor's plan does not provide all

necessary information to determine if the plan is feasible. The Debtor's Schedules indicate a negative monthly income yet proposes a plan payment of \$250.00. The Debtor does not provide any evidence or declarations as to how the Debtor intends or can make the plan payments. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

The Trustee additionally opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that, while Debtor has reported non-exempt equity in the amount of \$39,180.00 and the Debtor is proposing a 0% dividend to unsecured creditors. It appears that due to the Debtor being in pro per, the Debtor did not fill out Schedule C exempting any property. The Debtor has not explained how, under the proposed plan and the schedules filed under the penalty of perjury, that the unsecured claimants are entitled to a 0% dividend when there may be upwards of \$39,180.00 in non-exempt equity.

In summation, the Trustee's objections concern the failure of the Debtor to completely and accurately fill out the Schedules and the plan. The court nor any party in interest can determine if the plan as proposed is viable or feasible when the Debtor has failed to properly fill out all the necessary paperwork. As such, the court cannot determine if the Debtor meant to indicate a 10% interest on the Class 1 claims or is proposing a 0% dividend to unsecured creditors. Without complete information, the plan cannot be confirmed.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

12. [16-20007-E-13](#) BRENDA GLOVER
MDE-1 PRO SE

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. ROF III LEGAL
TITLE TRUST 2015-1
2-8-16 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, Office of the United States Trustee on February 8, 2016. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

U.S. ROF III Legal Title Trust 2015-1, by U.S. Bank National Association, as legal Title Trustee Secured Creditor, as serviced by Specialized Loan Servicing LLC SLS, the Creditor, opposes confirmation of the Plan on the basis that:

1. The plan fails to provide for the curing of the default on Creditor's claim. The plan proposes to cure the arrearages in the amount of \$28,000.00. However, the Creditor asserts that

the Debtor owes \$46,988.65 in arrears.

2. The Debtor will not be able to make payments under the proposed plan because the Debtor is proposing a monthly payment of \$250.00 but the Debtor reports a negative net monthly income of \$577.56.

The Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$46,988.65 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor's plan does not provide all necessary information to determine if the plan is feasible. The Debtor's Schedules indicate a negative monthly income yet proposes a plan payment of \$250.00. The Debtor does not provide any evidence or declarations as to how the Debtor intends or can make the plan payments. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable. Therefore, the objection is sustained.

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

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

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

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

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

13. 15-28113-E-13 BYRON/DARLENE DADE
CA-1 Michael Croddy

MOTION TO SELL
2-29-16 [[21](#)]

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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 28, 2016. By the court's calculation, 16 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 denied without prejudice.

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. 3620 Plymouth Drive., North Highlands, California

The proposed purchaser of the Property is Lamar Londy Johnson and Nekisha Monique Johnson and the terms of the short sale are:

1. Purchase price: \$185,000.00.

2. An Occupant Relocation Assistance amount to be paid is \$10,000.00 to Movant.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on March 3, 2016. Dckt. 29. The Trustee states that he does not oppose the Motion but notes that the \$10,000.00 in relocation assistance should be paid directly to the Trustee since the Property is not the Debtor's residence. The Trustee states that he does not oppose if that is provided in the order.

DISCUSSION

Unfortunately, the Debtor failed to provide sufficient notice. Pursuant to Fed. R. Bankr. P. 2002(a)(2), 21 day notice is required for Motions to Sell on less than 28-days notice. The Debtor here appeared to move pursuant to Local Bankr. R. 9014-1(f)(2). However, the Debtor failed to include the additional days necessary for notice pursuant to the Federal Rule of Bankruptcy Procedure.

Therefore, the Motion is denied without prejudice

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

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

The Motion to Sell Property filed by Byron and Darlene Dade, the Chapter 13 Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

ALTERNATIVE RULING

The 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. 3620 Plymouth Drive., North Highlands, California

The proposed purchaser of the Property is Lamar Londy Johnson and Nekisha Monique Johnson and the terms of the short sale are:

1. Purchase price: \$185,000.00.

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.
5. The \$10,000.00 HAFA Incentive Program monies shall be disbursed directly from escrow David Cusick, the Chapter 13 Trustee. Within fourteen (14) days of the close of escrow, the Debtor shall provide to the Chapter 13 Trustee the final escrow closing statement.

14. [14-27114-E-13](#) SHAUN/AMANDA STAUDINGER MOTION TO MODIFY PLAN
SJS-2 Elliott Gale 2-2-16 [[51](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

Local Rule 9014-1(f)(1) 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 2, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

Shaun and Amanda Staudinger ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 2, 2016. Dckt. 51.

TRUSTEE'S LIMITED OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 24, 2016. Dckt. 45. The Trustee asserts that the plan does not state a payment for January 2016 and does not authorize payments made to general unsecured creditors under the confirmed plan.

The Trustee states that he would have no objection if the order confirming corrected the language.

DISCUSSION

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

The Trustee's objection is well-taken. The proposed modified plan, as presented, does not correctly state what the Debtor has paid into the plan to date nor does it authorize previous disbursements made by the Trustee under the confirmed plan. However, the court does agree that the error appears to be a scrivener's error which can be corrected in the order confirming. Therefore, the order confirming will correct the plan to state:

The Debtors have paid a total of \$8,157.00 to the Trustee through January 2016. Payments commencing February 25, 2016 shall be \$315.00 for the remainder of the plan. All payments made to general unsecured creditors under the previously

confirmed plan are authorized.

Therefore, after the Debtor corrects the plan payments in the order confirming, 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 February 2, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the plan payments to state:

The Debtors have paid a total of \$8,157.00 to the Trustee through January 2016. Payments commencing February 25, 2016 shall be \$315.00 for the remainder of the plan. All payments made to general unsecured creditors under the previously confirmed plan are authorized.

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. [16-20117-E-13](#) ROSILANA LOPEZ
DPC-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-17-16 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on February 17, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. Debtor's name on her voluntary petition is "Rosilana" and the first name on the court's website is "Rosalina." On the Debtor's tax return and pay stubs, the Debtor's name is spelt "Rosalina." The Trustee is uncertain of the Debtor's true name.
2. The Debtor's plan relied on the Debtor's Motion to Value Collateral of Travis Credit Union.

As to the Trustee's second objection, the court issued an order on March 1, 2016, granting the Debtor's Motion to Value Collateral of Travis Credit Union. Therefore, the Trustee's second objection is overruled.

As to the Trustee's first objection, it appears that the Debtor's name has been provided for in error in at least two places. From the information provided it appears that the Debtor inadvertently spelt her name wrong on the documents filed by the court.

On February 21, 2016, the Debtor filed an amended voluntary petition. Dckt. 21. The petition correctly spells the first name as "Rosalina" which is in line with the Debtor's spelling on other documents. Therefore, the Objection is overruled.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on January 9, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [16-20219-E-13](#) MAUREEN CLINE OBJECTION TO CONFIRMATION OF
DPC-1 Scott Hughes PLAN BY DAVID P. CUSICK
2-17-16 [[31](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

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

17. [16-20819-E-13](#) MELANIE HAMPTON-BANFORD MOTION TO VALUE COLLATERAL OF
CA-1 Michael Croddy CPS, INC.
3-1-16 [[13](#)]

Tentative Ruling: The Motion to Value secured claim 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim 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 CPS, Inc. ("Creditor") is granted and the secured claim is determined to have a value of \$12,253.00.

The Motion filed by Melanie Hampton-Banford ("Debtor") to value the secured claim of CPS, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Nissan Sentra ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,253.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in May, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,354.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$12,253.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Melanie Hampton-Banford ("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 CPS, Inc. ("Creditor") secured by an asset described as 2013 Nissan Sentra ("Vehicle") is determined to be a secured claim in the amount of \$12,253.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$12,253.00 and is encumbered by liens securing claims which exceed the value of the asset.

18. [16-20819-E-13](#) MELANIE HAMPTON-BANFORD
CA-2 Michael Croddy

MOTION TO VALUE COLLATERAL OF
ALLIANT CREDIT UNION
3-1-16 [[18](#)]

Tentative Ruling: The Motion to Value secured claim 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 Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 28, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim 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 -----.

<p>The Motion to Value secured claim of Alliant Credit Union ("Creditor") is granted and the secured claim is determined to have a value of \$7,688.00.</p>
--

The Motion filed by Melanie Hampton-Banford ("Debtor") to value the secured claim of Alliant Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Honda Pilot ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,253.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v.*

Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in 2006, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,787.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,688.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Melanie Hampton-Banford ("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 Alliant Credit Union ("Creditor") secured by an asset described as 2006 Honda Pilot ("Vehicle") is determined to be a secured claim in the amount of \$7,688.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,688.00 and is encumbered by liens securing claims which exceed the value of the asset.

19. [15-26620-E-13](#) KEVIN/DEBRA JOHNSON
BLG-2 Paul Bains

MOTION TO CONFIRM PLAN
1-15-16 [[55](#)]

Final Ruling: No appearance at the March 15, 2016 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 15, 2016. By the court's calculation, 60 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 January 15, 2016 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. [15-28322](#)-E-13 LISA TOLBERT CONTINUED AMENDED MOTION FOR
SJS-3 Scott Johnson CONTEMPT
1-29-16 [[52](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

The Debtor having filed a "Withdrawal of Motion" for the pending Motion for Contempt (Dckt. 70), the court interpreting the "Withdrawal of Motion" to be a dismissal of the Motion by Debtor pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rule of Bankruptcy Procedure 9014 and 7041, the Motion has been dismissed by the Debtor and **the matter is removed from the Calendar.**

21. [15-29923-E-13](#) SHAWN/TIFFANY LOWRY
DPC-1 Stephen Murphy

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-10-16 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 10, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan is not the Debtor's best efforts because the Debtor does not report all of Debtor's income. The Debtor is above median income.
 - a. On Schedule I, Debtor reports the income for Debtor Shawn Lowry to be \$8,274.67 gross and \$5,884.45 net. The income reported fails to include Debtor's annual bonus income received. A review of the Debtor's pay stubs revealed that he received \$17,502.90 in incentive/bonus pay. At the Meeting of Creditors, the Debtor indicated

that his bonus varies. The Trustee suggests that the Debtor be ordered to turn over all future bonus/incentive income during the life of the plan and provide the Trustee with annual tax returns for verification of income.

- b. On Schedule J, the Debtor deducts \$460.00 per month for phone/cable expense. At the Meeting of Creditors, the Debtor admitted that the expense is actually \$36.00 per month, leaving an additional \$100.00 per month to increase the plan payment to \$350.00.
- c. On Schedule J, Debtor deducts \$36.00 per month for life insurance. Debtor admitted at the Meeting of Creditors that the Debtor no longer has this expense, they cancelled their life insurance.

The Trustee's objections are well-taken.

The Trustee next alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

[i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Debtor admitted at the Meeting of Creditors that there is additional income from bonus/incentive pay that the Debtor does not provide for in the plan. Additionally, the Debtor admitted that the expenses on the Debtor's Schedule J may be upwards of \$200.00 more than the Debtor's actual budget. Without the plan providing for all of Debtor's disposable income mixed with the fact that the Debtor admits that the reported expenses on Schedule J are inflated, the court may not approve the plan.

These gross defects in accurate disclosure cannot be "corrected" by stating the honest amount at the hearing - having been caught in the misstatement under penalty of perjury by the Trustee. Debtor and his counsel can prepare and file a motion to confirm an amended plan, provide notice to creditors, and set the future motion for hearing.

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.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 24, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Mario Blanco ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-23047) was dismissed on May 4, 2015, after Debtor failed to timely file documents. See Order, Bankr. E.D. Cal. No. 15-23047-B-13J, Dckt. 15, May 5, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the

court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

Elliot-Cook, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Due to filing Pro Se and lack of counsel, Debtor claims he was incapable of filing the required documents in time. Debtor has now obtained counsel to ensure that Debtor complies to the court's filing requirements. Debtor claims his budget and income will allow for making all chapter 13 plan payments and allow him to keep his home. If the automatic stay is not in place, Debtor fears his home would be foreclosed upon.

Debtor testifies that his effort to make his Chapter 13 case a success is in good faith and he wants to protect his home. Debtor has no intent to hinder or delay payment to Creditors and is committed to making his plan payments on time.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the

automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

23. [14-22226-E-13](#) SHAHLA HOWELL MOTION TO MODIFY PLAN
SJS-1 Scott Johnson 2-3-16 [[34](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

Local Rule 9014-1(f)(1) 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 3, 2016. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

Shahla Howell ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 3, 2016. Dckt. 34.

TRUSTEE'S LIMITED OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 25, 2016. Dckt. 45. The Trustee asserts that the Debtor has not clearly defined what the plan payments are for December, 2015 and January, 2016.

Section 6 of Debtor's modified plan proposes a plan payment of \$2,402.00 total paid in through December 2, 2015, then \$320.00 per month commencing February 25, 2016.

The Trustee asserts that his records reflect that, to date, the Debtor has paid in to the Trustee a total of \$2,402.00 with the last payment posted on December 2, 2015, in the amount of \$120.00

The Trustee states that he would have no objection if the order confirming corrected the language.

DISCUSSION

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

The Trustee's objection is well-taken. The proposed modified plan, as presented, does not correctly state what the Debtor has paid into the plan to date. However, the court does agree that the error appears to be a scrivener's error which can be corrected in the order confirming. Therefore, the order confirming will correct the plan to state:

The Debtor has paid a total in to the Trustee of \$2,402.00 through January, 2016, with payments of \$320.00 commencing February 25, 2016.

Therefore, after the Debtor corrects the plan payments in the order confirming, 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 February 3, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the plan payments to state:

The Debtor has paid a total in to the Trustee of \$2,402.00 through January, 2016, with payments of \$320.00 commencing February 25, 2016,

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

24. [12-37428-E-13](#) DREW/LORETTA ODABASHIAN MOTION TO MODIFY PLAN
PGM-2 Peter Macaluso 2-5-16 [[85](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2016. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Drew and Loretta Odabashian ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 5, 2016. Dckt. 85.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 26, 2016. Dckt. 91. The Trustee objects on the following grounds:

1. The Debtor is \$425.00 delinquent in plan payments.
2. The Debtor's plan proposes to reduce the Class 2 claim of Wells Fargo from \$17,000.00 to \$15,737.88 due to four post-petition payments of \$315.53 each, or \$1,262.12 total, paid directly by Debtor while the case was dismissed. The Creditor filed a Proof of Claim No. 2 on October 19, 2012, indicates a secured claim

of \$17,000.00 and unsecured of \$162.21.

The Trustee's records reflect that \$11,410.87 has disbursed to the secured portion of the Creditor's claim to date with a remaining principal owed of \$5,589.12. Debtor claims four payments were made during the time the case was dismissed. The Trustee has no objection if the Debtor is proposing that a portion of the claim (\$1,262.12, amount Debtor paid directly) be paid in Class 4, but oppose if Debtor is proposing to reduce Creditor's claim.

DEBTOR'S REPLY

The Debtor filed a reply on March 7, 2016. Dckt. 94. The Debtor begins by stating that the Debtor has cured the delinquency of \$425.00 and is current under the proposed plan.

As to the Trustee's second objection, the Debtor states that they do not intend to lower the Class 2 claim of Creditor and is agreeable to placing the following language in the order confirming the plan:

\$1,262.12 was paid directly to Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services.

The Debtor asserts that this allows for a remaining amount from the \$17,000.00 secured claim, less the paid amount of \$11,410.87, leaving a balance of \$5,589.13, less the \$1,262.12 paid directly.

DISCUSSION

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

The Debtor states in the reply that they have cured the delinquency. Unfortunately, the Debtor does not provide evidence to substantiate such a claim. The Debtor did not attach a declaration nor a properly authenticated exhibit of the payment. Without there being actual, admissible evidence, the Trustee's objection is still pending. Therefore it is sustained.

As to the Trustee's second objection, the court concurs that it appears to be a scrivener's error as to why the language authorizing the four post-petition payment during the time the case was dismissed. The Debtor is not attempting to reduce the claim of the Creditor, but rather is attempting to have the post-petition payments made directly by the Debtor to count towards the secured portion remaining. The language proposed by the Debtor to add in the order confirming sufficiently addresses this concern.

Therefore, while the modified Plan, after the amendment authorizing the Debtor's four post-petition payments to Creditor, complies with 11 U.S.C. §§ 1322, 1325(a) and 1329, the Debtor has failed to provide evidence of the default being cured. The Motion is denied 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 Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. [16-20229-E-13](#) MICHAEL/DOLORES RENDON
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-17-16 [[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 and Debtor's Attorney on February 17, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor has failed to file tax returns. The Trustee states that the First Meeting of Creditors was continued from February 11, 2016 to April 7, 2016 to allow the Debtors the opportunity to verify that recently filed tax returns have been received and processed by the appropriate agencies.

The Trustee states that on February 11, 2016, an amendment to Proof of Claim No. 2 filed by the Internal Revenue Service indicates that no tax returns for either Debtor for 2012 and 2015, and no 2010 return for Debtor Michael Rendon.

The Trustee's objections are well-taken. As indicated by Proof of Claim No. 2 and implied in the Debtors' testimony at the Meeting of Creditors, neither Debtor has filed a return for 2012 and 2015, and no 2010 return was filed for Debtor Michael Rendon. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to deny confirmation. 11 U.S.C. § 1325(a)(9).

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

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

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

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

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

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 19, 2016. By the court's calculation, 56 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.

Sharan Singh ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 19, 2016. Dckt. 91.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 24, 2016. Dckt. 97. The Trustee opposes confirmation on the following grounds:

1. The payments stated in Section 6 appear to be incorrect. January 2016 is the 48th month of the Debtor's plan. The confirmed plan calls for 60 payments of \$575.00 per month. The Debtor has made 47 payments of \$575.00 and 1 payment of \$299.00 for January 2016. It appears the Debtor intended 47 payments of \$575.00 through December 2015 and then commencing January 2016, 13 payments of \$299.00.

2. The Trustee is uncertain of the Debtor's ability to pay. The Debtor's most recent Schedule I filed on February 13, 2012 and the most recent Schedule J was filed March 3, 2012. The Debtor states in her declaration that her non-filing spouse purchased a vehicle to replace her vehicle which had been wrecked. The remaining insurance proceeds after the vehicle was paid off were applied to the purchase of a used vehicle for her. The monthly payment on the vehicle is \$322.01. According to the Trustee, \$267.00 is included in the confirmed plan as a monthly dividend on the wrecked vehicle. The Debtor states her daughter has pledged to give her money each month to make up the difference.

DISCUSSION

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

To begin with the Trustee's second objection, the court has the same concern as the Trustee. The Debtor does not provide evidence or the declaration of her daughter stating under the penalty of perjury that the daughter is willing to commit funds to the payment of the plan. Furthermore, the Debtor's schedules are now over four years old. The Debtor has not filed an amended or supplemental schedules to indicate any change in the Debtor's finances. The court cannot confirm a plan when the Debtor's finances appear to be out of date as well as the Debtor does not provide competent evidence outside of her own testimony that her daughter is willing to contribute to the plan. The Debtor does not appear to be able to make plan payments and, therefore, the plan cannot be confirmed. 11 U.S.C. § 1325(a)(6).

While the Trustee's first objection appears to be a scrivener's error which could be corrected in the order confirming, the fact that the Debtor does not appear to be able to make plan payments makes this plan unconfirmable.

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.

27. [15-29038-E-13](#) KEVIN/COREN TRIGALES
AFL-4 Ashely Amerio

MOTION TO CONFIRM PLAN
1-22-16 [[54](#)]

Final Ruling: No appearance at the March 15, 2016 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 22, 2016. By the court's calculation, 53 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 January 22, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

28. [16-20144](#)-E-13 GLENDA STERN OBJECTION TO CONFIRMATION OF
DPC-1 Mary Ellen Terranella PLAN BY DAVID P. CUSICK
2-17-16 [[21](#)]

WITHDRAWN BY M.P. - Filed 2/24/16 - Dckt. 25

Final Ruling: No appearance at the March 15, 2016 hearing is required.

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

29. [15-25446](#)-E-13 DONALD MAH AMENDED OBJECTION TO CLAIM OF
RWH-2 Pro Se U.S. BANK, N.A., CLAIM NUMBER 3
1-20-16 [[73](#)]

DEBTOR DISMISSED: 02/21/2016

Final Ruling: No appearance at the March 15, 2016 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 Claim of U.S. Bank. N.A. 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.

30. [15-29147](#)-E-13 JOHN QUIROZ STATUS CONFERENCE RE: MOTION
RK-1 Richard Kwun FOR SANCTIONS FOR VIOLATION OF
THE AUTOMATIC STAY
12-23-15 [[14](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

The court previously entered an order removing the Status
Conference from calendar (Dckt. 81).

31. [15-29454](#)-E-13 MICHAEL/KAYLENE YANDEL MOTION TO CONFIRM PLAN
SJS-2 Matthew DeCaminada 1-19-16 [[21](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

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

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

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

A Motion to Confirm having been filed by the Chapter 13 Debtor, the Chapter 13 Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Confirm is dismissed without prejudice and the plan filed January 19, 2016 is not confirmed.

32. [15-29754-E-13](#) REGIS/BARBARA URBAN
DPC-1 Scott Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-17-16 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 17, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the first Meeting of Creditors held on February 11, 2016. The Trustee states that he does not have sufficient information to determine whether or not the case is suitable for confirmation, especially in light of the Debtor's plan proposing to increase the payment from \$2,210.00 to \$2,810.00 in 12 months.

The Trustee's objections are well-taken.

The basis for the Trustee's objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan

while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). The fact that the Debtor is proposing to increase plan payments by \$600.00 on month 12 without providing any evidence to the Trustee or the court as to the Debtor's ability of doing so further highlights the importance of the Meeting of Creditors. This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

33. [15-26656-E-13](#) GARY STEPHAN
DAO-1 Dale Orthner

OBJECTION TO CLAIM OF LAURIE
STEPHAN, CLAIM NUMBER 18
1-25-16 [[59](#)]

Final Ruling: No appearance at the March 15, 2016 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on January 25, 2016. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 18 of Laurie Stephan is sustained and the claim is disallowed in its entirety, without prejudice.

Gary Stephan, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Laurie Stephan ("Creditor"), Proof of Claim No. 18-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be priority in the amount of \$74,115.00, pursuant to 11 U.S.C. § 507(a)(1). Objector asserts that at the time of filing the petition, the Objector did not owe child support nor was an order for spousal support entered. The Objector asserts that the Proof of Claim No. 18 is facially erroneous because the Creditor admits in her declaration that no support payments were owed at the time the petition was filed.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on February 1, 2016.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed,

the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

11 U.S.C. § 507 provides the following, as to domestic support obligations:

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, ***as of the date of the filing of the petition in a case under this title***, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, ***as of the date of the filing of the petition***, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

11 U.S.C. § 507 (emphasis added).

Review of Proof of Claim No. 18

The attachment to Proof of Claim No. 18 is the declaration of Laurie Stephen. In it, she states: (1) the Debtor and Laurie Stephen are still legally married; (2) there has been a divorce proceeding since April 2013, which has been quite acrimonious; (3) a restraining order has been issued against the Debtor; (4) Laurie Stephens has been awarded full custody of their four minor children; (5) Debtor has not contributed to the children's expenses; (6) on December 16, 2015 a hearing to determine the child support obligation of Debtor was conducted in the State Court family law proceeding; (7) Debtor has been ordered to pay \$1,000.00 a month in child support, retroactive to October 2015; (8) the State Court judge has not yet ruled on the issue of spousal support; (9) Debtor's average annual income is \$200,000; and (10) Laurie Stephens believes that when awarded, her retroactive spousal support obligation computed through July 2015, will be in excess of \$74,115.

As is clear from the attachment, the State Court has not yet awarded any spousal support, whether retroactive or prospective. In the Objection to Proof of Claim NO. 18, Debtor admits that his child support and spousal support (if any) obligations will be prospective and did not exist as of the commencement of the case. Debtor does not assert that he does not now owe a child support obligation or that he may owe a child support obligation.

Based on the evidence before the court, the creditor's claim as stated in Proof of Claim No. 18 is disallowed in its entirety 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 Objection to Claim of Laurie Stephan, Creditor filed in this case by Gary Stephan, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 18 of Laurie Stephan is sustained and the claim is disallowed in its entirety. This is without prejudice to any rights of Laurie Stephan and the children of Debtor to obtain child support or spousal support determinations and orders in the State Court family law dissolution proceeding.

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 25, 2016. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

Gary Stephan ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 25, 2016. Dckt. 63.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 3 Trustee, filed an opposition to the instant Motion on February 26, 2016. The Trustee opposes on the following grounds:

1. The Trustee is unable to determine whether the plan is feasible based on the following:
 - a. The Debtor fails to disclose the amounts to be paid into the plan. In Section 6.04, Debtor proposes to pay into the plan the non-exempt equity in his property. Debtor fails to disclose to the Trustee, creditors, and the

court the source and the amount. According to a review of Debtor's schedules, the original plan, and the Trustee's calculations, the non-exempt amount is at least \$127,677.00. The Trustee would not oppose this correction being placed in the order confirming if the court is willing to allow this correction.

- b. The non-exempt equity Debtor proposes to pay into the plan exists in the property located at 3 Hearthside Road, Ladera Ranch, California. However, Debtor lists this property in Class 4 of the plan as being paid directly by his separated spouse. The Debtor's Statement of Financial Affairs indicates that the Debtor and his spouse were married in 1995 then separated on January 12, 2012. The separated spouse lives in the subject property. Schedule H does not indicate any codebtors. The Trustee is uncertain the proposed sale or refinance of the subject property is or will be possible given the facts and the plan will complete in 375 months without the proposed lump sum.
2. The Debtor's plan may fail the liquidation analysis. The unsecured claims total \$144,643.79, the Debtor's plan should propose a minimum of 89% to the unsecured creditors to meet liquidation, not the 35% proposed in the plan.
3. The Debtor's plan may not be the Debtor's best efforts. The Debtor is below median income. The Trustee asserts that there may be more equity in the real property.
4. The plan relies on the Objection to Claim of Laurie Stephan, Claim No. 18.
5. In section 6.02 of the plan, Debtor indicates a total paid into the plan through January 25, 2016 is \$621.67. This is inaccurate, the total amount paid into the plan through January 25, 2016 is \$770.56. The Trustee requests this be corrected in either the order confirming or plan be denied.

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The court summarizes the Debtor's Amended Chapter 13 Plan (Dckt. 66) as follows:

- A. The term of the Plan is sixty months.
- B. The Plan shall be funded by:
 1. \$621.67 paid through January 25, 2016;
 2. \$298.10 a month for the remaining fifty-five months of the plan (\$16,395.5); and
 3. At some unstated time, in some unstated way, on unstated

conditions, Debtor shall pay an unstated amount of unidentified equity in all of Debtor's property - with any unpaid attorneys' fees to be paid in first priority.

- C. Class 1 Secured Claims to Be Paid.....None
- D. Class 2 Secured Claims to Be Paid.....None
- E. Class 3 Surrender of Collateral
 - 1. 2013 GMC Yukon.....Surrendered
 - 2. 2013 Toyota Avalon.....Surrendered
 - 3. Lake Havasu City Property.....Surrendered
- F. Class 4 Secured Claims to Be Paid Outside of Plan
 - 1. Hearthside Road Property.....To be Paid By Separated Wife, Not Debtor
- G. Class 5 Priority Unsecured Claims
 - 1. Internal Revenue Service.....\$10,408.76
 - 2. California Franchise Tax Board\$ 0.00
 - 3. California Employment Devel. Dept.....\$ 1,165.57
- H. Class 6 Special Unsecured Claims.....None
- I. Class 7 General Unsecured Claims
 - 1. \$335,950.52 in General Unsecured Claims
 - 2. Paid at least 35% Dividend.....\$117,582.68

Plan, Dckt. 66.

On Amended Schedule I, Debtor states that he has only recently been employed, with gross income of \$3,683.34. Dckt. 67. Debtor has filed an Amended and Supplemental Schedule J, which means that Debtor inconsistently states under penalty of perjury that he has corrected inaccurate information in Original Schedule J (the Amended Schedule J) and states new post-petition changes which did not exist as of the commencement of the case (the Supplemental Schedule J). Dckt. 67 p. 6-7. Debtor has checked both the amended and supplemental schedule boxes on Amended/Supplemental Schedule J.

On Original Schedule I (Dckt. 1 at 27), Debtor states that he has started his job one month before filing Schedule I. Debtor states that his gross income was \$3,033.33, \$650 a month less than in the Amended/Supplemental Schedule I.

On the Statement of Financial Affairs Debtor reports having received rental income for the Arizona Property of \$9,180 in 2013 and 2014, but no rental income is stated for 2015. For 2013 Debtor lists total income of \$109,180.00 and \$39,180.00 in 2014. Dckt. 1 at 32.

Prior Proceedings

Debtor and his nemesis, Laurie Stephens, his wife, have been in court previously. As noted by the court in the Civil Minutes for the November 17, 2015 hearing on Laurie Stephens objection to confirmation of Debtor's previous plan, "Rather, it [Laurie Stephens objection to confirmation] reads somewhat like merely a spill over from the family court battle which, after several years, the parties have not been able to obtain even a interim support order." Dckt. 43. The current "plan" continues to smell of "family court battles," not good faith, bona fide Chapter 13 rehabilitation.

In sustaining the Trustee's objection to Debtor's previous Chapter 13 Plan, the court stated:

"Lastly, the Debtors proposal of a lump sum at the end of the plan is not in good faith. The Debtor does not state how, when, or why the Debtor will suddenly be able to have a large sum of liquid funds to make a payment to the Trustee. The Debtor in neither the Motion nor Declaration provides any explanation as to the Debtors ability to make such.

In substance, the Plan is little more than a five year reprieve in addressing Debtors claims. The Plan Payments are merely disguised payments to Debtors counsel for obtaining the five year delay. If the plan were to actually go fifty-nine months, some monies would also be paid on non-discharge taxes which Debtor has failed to pay.

This Plan demonstrates that it has not been filed, and is not being prosecuted in good faith."

Civil Minutes, Dckt. 45.

Pending Motion for Relief From Stay

On February 24, 2016, Central Mortgage Company filed a motion for relief from the automatic stay so that it may conduct a foreclosure sale of the Hearthside Road Property. Dckt. 69. This is the property in which there is sufficient value for Debtor and Laurie Stephens to assert a \$100,000 exemption and an additional \$70,000.00 net sales proceeds for creditors through the Plan. Civil Minutes, Dckt. 39.

The sole grounds stated in the Motion is that Debtor (or the designated payor, Laurie Stephens) has failed to make the Class 4 payments on the secured claim.

Denial of Motion to Confirm

The Trustee's objections are well-taken.

As to the Trustee's first objection, the court concurs that the plan is too speculative as to the funding of the plan when the Debtor does not specifically provide mechanism in the case where the property is not sold and if the Debtor does, in fact, pass the liquidation analysis.

This is not sufficient to show that the Debtor has satisfied 11 U.S.C. § 1325(a)(4) liquidation analysis nor how much equity the Debtor in fact has

in the property. The Debtor does not state how, if there is not actual equity in the property, the plan will be funded otherwise. The nature of the plan as presented is far too speculative that the court nor any other party in interest can, with certainty, determine the feasibility and viability of the plan based on the "maybe" sale of the property in which the Debtor has not provided evidence of its actual value.

These concerns are only furthered by the fact that the Debtor's former spouse currently lives in the property that the Debtor proposes to use non-exempt equity to fund the plan. There is no indication of any codebtors nor does the Debtor provide how the non-exempt equity will be provided for in the plan.

The crux of the Trustee's objections boils down to the fact that the plan neither fully provides for how the plan will be funded nor accurately states what has been paid into the plan to date. The plan, as proposed, is completely speculative and based on this non-exempt equity that the Debtor alleges to have in the property that the Debtor no longer resides. The fact the Debtor proposes to use this non-exempt equity to fund the plan but still fails to provide sufficient dividend to the unsecured under 11 U.S.C. § 1325(a)(4) makes this plan unconfirmable.

The court recalls during the previous hearing Debtor, Laurie Stephens, and Debtor's counsel feigned an inability to sell the Hearthside Road Property "because the state court judge would not order it to be sold." At the hearing the court reminded Debtor, Laurie Stephens, and Debtor's counsel that the Hearthside Property is property of the bankruptcy estate and subject to the exclusive federal jurisdiction exercised by this court. 28 U.S.C. § 1334(e) and 157(a), 11 U.S.C. § 541, and E.D. Cal. Gen Order 182, 223.

The current plan says that at some nonspecific time, in some non-specific way, the Hearthside Property will be sold by an unidentified person, to pay an unstated amount of money into the plan. This is merely restating the fundamental defect in previous Chapter 13 Plan.

Debtor and Laurie Stephens have merely moved the years of non-productive State Court family law litigation to this court. However, there are several significant differences now that Debtor has elected to file this Chapter 13 case. First, the federal courts are unwilling to allow parties to non-productively waste the time of the court and other parties. Second, by electing to be a Chapter 13 Debtor, Gary Stephan accepted the fiduciary duties of a "trustee" as to the property of the bankruptcy estate. 11 U.S.C. § 1303 (debtor having rights and powers of a bankruptcy trustee); *Houston v. Eiler (In re Cohen)*, 305 B.R. 886 (B.A.P. 9th Cir. 2004).

Debtor and Laurie Stephens have now put the bankruptcy estate on the precipice of losing an asset with at least \$170,000.00 of net equity because of their continuing dysfunctional family court dissolution proceedings. While Laurie Stephens may throw away her assets in her war with the Debtor, the fiduciary of the bankruptcy estate cannot elect to flush away assets rather than allowing Laurie Stephens to get anything.

In addition to the defects in the Plan, Debtor once again demonstrates that the plan has not been proposed in good faith. Further, Debtor's conduct indicates that this bankruptcy case was not filed in good faith.

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.

35. [15-29263-E-13](#) LEILA POURSAED
DPC-2 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
2-9-16 [[23](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on February 9, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee objects to the Debtor's use of the California exemptions without the completely filing of the spousal waiver required by California Code of Civil Procedure §703.140, for failing to claim exemptions pursuant to California Code of Civil Procedure § 703.140, and incorrectly claiming exemptions under 11 U.S.C. § 522(b)(3).

California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this

chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been signed by the Debtor. Dckt. 11. Furthermore, the Debtor is attempting to claim exemptions pursuant to 11 U.S.C. § 522(b) which is not permitted without the Debtor showing that she qualifies for the exemptions of § 522. In order to be entitled to the exemptions outlined in the Code, the Debtor must show that she does not fit in the domicile requirements of 11 U.S.C. § 522(b)(3).

The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

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

The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed in their entirety.

36. [15-29669-E-13](#) TIFFANY BAILEY
DPC-1 Michael O Hays

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-17-16 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 17, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent in plan payments in the amount of \$404.00. The Debtor has paid \$0.00 into the plan.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is \$404.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6). FN.1.

FN.1. On March 4, 2016, the Chapter 13 Trustee filed a motion to dismiss this case, alleging that Debtor was \$808.00 delinquent in plan payments. Motion and Supporting Declaration; Dckts. 32 and 34.

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

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

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

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

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

37. [13-25371-E-13](#) ROY/MICHELLE MARIANO
WW-3 Mark Wolff

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
2-16-16 [[66](#)]

Final Ruling: No appearance at the March 15, 2016 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 February 16, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of 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 Roy and Michelle Mariano ("Debtors") 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 8709 Elfin Court, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of \$245,000.00 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.

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 4-1 filed by Wells Fargo Bank, N.A. is the claim which may be the subject of the present Motion.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$326,473.32. Creditor's second deed of trust secures a claim with a balance of approximately \$71,479.33. 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 in the secured amount of the claim 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 Roy and Michelle Mariano ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion 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 8709 Elfin Court, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$245,000.00 and is encumbered by senior liens securing claims in the amount of \$326,473.32, which exceed the value of the Property which is

March 15, 2016 at 3:00 p.m.

subject to Creditor's lien.

38. [13-31975-E-13](#) JACK/LINDA GANAS MOTION TO COMPROMISE
PD-1 Peter Cianchetta CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH JACK GEORGE
GANAS AND LINDA MAE GANAS
AND/OR MOTION TO APPROVE LOAN
MODIFICATION
2-10-16 [[97](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion For Approval of Compromise and Motion For Approval of Loan Modification (the court having made Fed. R. Civ. P. 18 and Fed. R. Bankr. P. 7018 applicable to this one Contested Matter) is continued to 3:00 p.m. on March 22, 2016. On or before 5:00 p.m. on March 17, 2016, Wells Fargo Bank, N.A. will file and serve on the Chapter 13 Trustee and the U.S. Trustee a supplemental exhibit consisting of the Loan Modification Agreement which is the subject of this Motion seeking two different claims for relief.

Wells Fargo Bank, N.A., the Defendant, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Jack and Linda Mae Ganas, the Debtor-Plaintiff, ("Settlor"). The claims and disputes to be resolved by the proposed settlement are those arising in the Adversary Proceeding No. 14-02080 and the Movant's underlying Proof of Claim in the Settlor's bankruptcy case.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 99):

- A. Movant will issue a check in the amount of \$3,500.00 made payable to the order of Cianchetta and Associates and deliver the check to Peter C. Cianchetta, at 8788 Elk Grove Blvd., Suite 2A, Elk Grove, California as and for attorney's fees. Movant will also provide Settlor with a proposed loan modification agreement regarding the property commonly known as 613 McDevitt Drive, Wheatland, California ("Property") with an unpaid principal balance in the amount of \$89,338.17 and the first payment due on October 1, 2015. This Agreement is not intended as a loan modification agreement or to provide the terms regarding Settlor's acceptance of a loan modification agreement. Rather, on August 14, 2015, Movant provided Settlor with a formal loan modification agreement that provides the terms and conditions of the loan modification as well as the actions the Settlor must take to accept the modification.
- B. In exchange for the foregoing, Settlor agree to voluntarily dismiss the Adversary Proceeding and Complaint with prejudice as to Movant within seven days after the entry of the order on the stipulated Motion to Approve Compromise that will be filed jointly by the parties.
- C. There is no admission of liability.
- D. The Settlor fully, finally, and forever settle and release all demands, claims, and claims for relief relating to this matter only.

DISCUSSION

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

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

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

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released. Settlor has granted a corresponding release for Debtor and the Estate.

Probability of Success

The Movant asserts that given the stipulated nature of the compromise and the extensive litigation that remains if the case proceeds, the parties believe that the settlement is in the best interest of all parties.

Difficulties in Collection

The Movant argues that if the case went to judgment, there would be some uncertainty as to whether such payment on the judgment would occur. In view of the potential collection difficulties, the parties believe the settlement is in the best interest.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. The Movant estimates that if the matter went to trial, litigation expenses would consume a substantial amount of an expected recovery. Movant projects that the proposed settlement nets approximately the same or a greater recovery for the Estate than if the case proceed to trial, but without the costs of litigation.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further

litigation.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase or prosecute the property, claims, or interests of the estate to present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The compromise provides for the immediate settlement of the claims arising in the Adversary Proceeding. More significantly, this settlement allows the parties to effectuate the loan modification previously worked out between the parties. Finally, the settlement provides for reimbursement of reasonable attorneys fees for Settlor's attorney. Though paid directly to the attorney, these are fees due counsel for services provided to the Debtor in this case.

AUTHORIZATION TO COMBINE DIFFERENT CLAIMS FOR RELIEF IN ONE MOTION

Movant has chosen to title this Motion as if it is requesting two separate claims for relief - Motion to Approve Compromise and Motion For Loan Modification. Dckt. 97. As counsel for Movant is well aware, Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 which allow for combining different claims for relief in one complaint is not applicable for Motions. See Fed. R. Bank. P. 9014.

The reason for the Supreme Court expressly making the multi-claim provisions of Rule 18 not applicable to the bankruptcy law and motion practice is evident. As with the present motion, contested matters are provided for a very short notice period (only 28 days) for addressing substantive matters in bankruptcy court. These contested matter proceedings include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate- proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. The Supreme Court and Rules Committee excluded the provision of Fed. R. Bankr. P. Rule 7018 and Fed. R. Civ. P. Rule 18 from the rapid law and motion practice in the bankruptcy court. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

Here, Movant purports to request two separate claims, without seeking relief from this court to make the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 applicable to this contest matter proceeding as permitted in Federal Rule of Bankruptcy Procedure 9014(c). Normally, the court would deny such a motion.

However, it appears that this may well be a situation where making the provisions of Federal Rule of Civil Procedure 18 applicable to contested matter practice is proper. Here, the "compromise" is merely the parties agreeing to proceed with the loan modification. As stated in the Settlement Agreement, the loan modification agreement was "provided to Debtors" on August 14, 2015.

The court orders that the provisions of Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 are made applicable to this

Contested matter to combine the two different claims for relief - (1) Approval of the Settlement and (2) Authorization for Debtor to Enter into the Loan Modification (post-petition secured credit).

CONTINUANCE OF HEARING

However, the present Motion highlights one of the problems when parties try to cram multiple claims for relief into one Motion. The Parties have not:

- A. Stated with particularity in the Motion (Fed. R. Bankr. P. 9013) the terms of the loan modification; or
- B. Filed a copy of the proposed loan modification (Fed. R. Bankr. P. 4001(c)(1)(A) and (B)).

The Settlement Agreement expressly states that it is not the loan modification agreement.

Unfortunately, the present request is nothing more than a directive to the court to sign and order stating that "whatever the parties have done and are going to do, it's OK with the court." As all of the attorneys involved in this Contested Matter know, the court does not issue such "deaf, mute, and blind" orders.

Though it pains the court given the substantial work of the parties and their attorneys, and what appears to be a mutually advantageous settlement, the court must continue the hearing for the parties to file a copy of the Loan Modification Agreement (the court being willing to waive the Fed. R. Bank. P. 4001(c)(1)(A) and (B) and 9013 deficiencies). FN.1.

FN.1. The court notes that Movant has filed an eight page "points and authorities." It appears that this document is short on the "points and authorities," and actually contains many of the grounds which must be stated with particularity in the Motion. Possibly, if counsel for Movant had complied with the basic pleading requirements for the Motion as regularly required by the court, he would have noticed that the Motion was devoid of the approval of loan modification grounds and there was no loan modification agreement being presented to the court.

To the extent that counsel seeks to argue at the hearing that the basic terms are stated in the "points and authorities, so hang the rule and just issue an order," such arguments are rejected by the court. Merely because an attorney chooses to create his or her own rules is not the same as complying with the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure, and Federal Rules of Evidence adopted by the Supreme Court.

The court continues the hearing to 3:00 p.m. on March 22, 2016. The supplemental exhibit consisting of a copy of the Loan Modification Agreement shall be filed and served on the Chapter 13 Trustee and the U.S. Trustee on or before March 17, 2016. No supplemental declaration is required to properly authenticate the exhibit, the court accepting it as being jointly filed by the settling parties when it is filed by Movant.

The court shall review the loan modification agreement and may remove the continued hearing from the calendar and issue a final order granting the motion and granting the two different claims for relief if the court does not have any questions or concerns relating to the Loan Modification Agreement.

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

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

The Motion to Approve Compromise filed by Wells Fargo Bank, N.A., Defendant, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Approve Compromise and Motion to Approve Loan Modification is continued to 3:00 p.m. on March 22, 2016.

IT IS FURTHER ORDERED that on or before 5:00 p.m. on March 17, 2016, Movant shall file and serve on the Chapter 13 Trustee and the U.S. Trustee a copy of the executed Loan Modification Agreement between Movant and Jack and Linda Mae Ganas for which approval is sought by the Parties.

39. [15-29675-E-13](#) TOMMY/LINDA THOMAS
DPC-2 Bruce Dwiggin

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
2-17-16 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 17, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent in plan payments in the amount of \$3,014.56. The Debtor has paid \$0.00 into the plan.
2. The Debtor is unable to make plan payments. The Debtor's projected disposable income is <-\$515.92> while the Debtor's plan proposes a monthly payment of \$2,703.33.

The Trustee's objections are well-taken.

The basis for the Trustee's objection is that the Debtor is \$3,014.56.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Furthermore, the Debtor's Schedule J, filed December 17, 2015, lists a -\$515.92 monthly net income, while the Plan provides for a \$2,703.33 monthly payment. Taken together, this suggests the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

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.

40. [16-20576-E-13](#) DANA MAGWOOD AND TRISHA MOTION TO VALUE COLLATERAL OF
FF-1 GUTIERREZ-MAGWOOD HCA
Dana Wares 2-9-16 [[12](#)]

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 Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 9, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of HCA dba Hyundai Motor Finance ("Creditor") is denied without prejudice.

The Motion filed by Dana Earle Magwood and Trisha Arlene Gutierrez-Magwood ("Debtor") to value the secured claim of HCA dba Hyundai Motor Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Hyundai Sonata, VIN ending in XXXX5891 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,363.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The 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.").

Therefore, due to the failure of the Debtor to properly serve the Creditor, the Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Dana Earle Magwood and Trisha Arlene Gutierrez-Magwood ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

ALTERNATIVE RULING

The Motion filed by Dana Earle Magwood and Trisha Arlene Gutierrez-Magwood ("Debtor") to value the secured claim of HCA dba Hyundai Motor Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Hyundai Sonata, VIN ending in XXXX5891 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,363.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 9, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$14,697.47. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,363.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Dana Earle Magwood and Trisha Arlene Gutierrez-Magwood ("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 HCA dba Hyundai Motor Finance ("Creditor") secured by an asset described as 2011 Hyundai Sonata, VIN ending in XXXX5891 ("Vehicle") is determined to be a secured claim in the amount of \$6,363.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$6,363.00 and is encumbered by liens securing claims which exceed the value of the asset.

41. [15-25177-E-13](#) DAVID CIERLEY MOTION TO MODIFY PLAN
SLE-1 Julius Engel 1-29-16 [60]

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 29, 2016. 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.

David Cierley ("Debtor") filed the instant Motion to Confirm the

Modified Plan on January 29, 2016. Dckt. 60.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 26, 2016. Dckt. 67. The Trustee objects on the following grounds:

1. The Debtor has referenced a non-existent amended plan in the supporting Motion and Declaration. The Trustee states that a proposed modified plan was filed on January 29, 2016 while the Motion refers to a plan dated June 30, 2015.
2. The order confirming the plan filed October 15, 2015 reflects attorney fees \$2,805.00 shall be paid by the Trustee from the plan payments and the proposed plan lists attorney fees of \$2,000.00 shall be paid through this plan. The Trustee's records reflect \$2,405.00 in attorney fees remains to be paid through the plan.
3. The Trustee is unclear of the proposed plan treatments. It appears that the Debtor has proposed the plan to cure the delinquency but has not provided for the proper payments in the plan. According to the Trustee's records, the Debtor has paid a total of \$10,913.16 through February 2016.

DEBTOR'S REPLY

The Debtor filed a reply on March 8, 2016. Dckt. 70. No evidence is provided with the Reply. Debtor's counsel argues in the Reply as follows:

1. The reference to a plan on 6/30/15 was a harmless error and was meant to reference the plan filed on January 29, 2016.
2. Counsel requests that the correct disclosure of attorney fees be reflected in the order confirming plan.
3. Counsel proposes to use the order confirming to state "as of 1/25/16 Debtor has paid in \$8,600.00 and on or before 2/25/2016, Debtor is to pay \$1,593.16 per month until final plan payment."

DISCUSSION

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

The Trustee's objections are well-taken. While the Debtor's reply directly indicates that the error highlighted by the Trustee appear to be mere scrivener's errors and could be corrected in the order confirming, the proposed language offered by the Debtor does not accurately reflect the plan.

As to the Trustee's objection that the Motion and Declaration refer to the incorrect plan, this is clearly a mistake by the Debtor and Debtor's counsel in preparing the documents. While this alone would not be cause for denial of confirmation, the Debtor's reply fails to correct the plan language

to accurately reflect what has taken place to date.

The Debtor does not propose any language correcting the attorney fees paid. but rather just requests that the order confirming correct it. Additionally, the Debtor's proposed language as to plan payments once again fails to accurately state what has been paid. According to the Trustee, the Debtor has paid a total of \$10,913.16 through February 2016. The proposed language from the Debtor indicates that only \$10,193.14 has been paid into the plan through February 2016.

While taken alone, each of these may be able to be corrected in the order confirming, the collective failure to accurately list the necessary information in the plan and then to propose amendment language that still does not fully correct the problems makes this plan unconfirmable.

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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

Nicholas Righter ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 27, 2016. Dckt. 68.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 26, 2016. Dckt. 74. The Debtor objects on the following grounds:

1. The Debtor is \$979.65 delinquent in plan payments.
2. The Debtor's plan exceeds 60 months due to the Debtor proposing to pay through the plan \$3,000.00 attorney fees, \$1,000.00 to Internal Revenue Service priority tax, and \$27,147.45 in unsecured claims, for a total of \$31,147.45 plus trustee fees. The Debtor is only proposing to pay in \$29,104.25.

3. The Debtor's plan is not the Debtor's best efforts. Debtor is above median income. Debtor's plan proposes payment of \$494.00 per month. Schedule J discloses that Debtor's disposable income total \$841.04 per month. In addition, Debtor fails to report bonus income the Debtor receives periodically. The Debtor's supplemental exhibits reports a gross income of \$4,999.80. The Debtor's supplemental Schedule I indicates that he continues to receive bonuses throughout the year as well as at the end of the year.

Furthermore, the Debtor has failed to provide the most recent pay stubs for the past 6 months which would be August 2015 to present.

DISCUSSION

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

The Trustee's objections are well-taken.

The basis for the Trustee's first objection is that the Debtor is \$979.65 delinquent in plan payments, which represents multiple months of the \$494.00 plan payment. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 82 months due to the Debtor's plan proposing to pay \$31,147.45 plus trustee fees through the plan but is only proposing to pay in \$29,104.25. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

Lastly, the Trustee next alleges that the Plan violates 11 U.S.C. § 1325(b)(1), which provides:

[i]f the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or (B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

The Debtor fails to list the yearly bonuses as well as the bonuses received throughout the year in income. Without this information, the court nor any party in interest can determine if the Debtor's plan is the Debtors best efforts, especially when there may be additional income not reported that should be committed to the plan. Thus, the court may not approve the plan.

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

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

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

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

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

43. [15-28983-E-13](#) MANUEL/VIRGINIA MADRID MOTION TO CONFIRM PLAN
MGG-1 Matthew Grech 1-29-16 [[27](#)]

Final Ruling: No appearance at the March 15, 2016 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 29, 2016. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 January 29, 2016 (Dckt. 31) 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.

44. [14-31993-E-13](#) DAVID/ROWENA ABBOTT
SJS-3 Scott Johnson

MOTION TO MODIFY PLAN
2-9-16 [[59](#)]

Final Ruling: No appearance at the March 15, 2016 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 February 9, 2016. 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 February 9, 2016 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.