UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

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

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1. 14-31801-E-13 ANTHONY HARRIS
RAC-1 Richard Chan

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

CASE DISMISSED 12/22/14

TELEPHONIC APPEARANCE OF REBECCA CALEY, ATTORNEY FOR MOVANT PERMITTED.

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

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

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

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

The Motion to Confirm Termination or Absence of Stay is denied without prejudice.

BMW Bank of North America, by and through its servicer, BMW Financial Services NA, LLC ("Movant") filed the instant Motion to Confirm Termination or Absence of Stay on December 18, 2014. Dckt. 14. The Movant requests that the

court issue an order confirming that no stay is in effect pursuant to 11 U.S.C. § 362(c)(4)(A)(ii). Accompanying the Motion is the Declaration of Rebecca Caley.

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

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

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

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

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

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

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

APPLICABLE LAW

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

JANUARY 27, 2015 HEARING

Prior to the hearing, the court posted its tentative ruling, which stated that "APPEARANCE OF REBECCA CALEY, COUNSEL FOR MOVANT REQUIRED FOR JANUARY 27, 2015 HEARING Telephonic Appearance Permitted FAILURE OF COUNSEL TO APPEAR SHALL RESULT IN DENIAL OF THE MOTION AND ISSUANCE OF AN ORDER TO APPEAR, WITH NO TELEPHONIC APPEARANCE PERMITTED." At the hearing, Rebecca Caley did not appear. The court continued the hearing to 3:00 p.m. on March 24, 2015 and ordered that Ms. Caley appear at the continued hearing. Dckt. 27.

MOVANT'S COUNSEL'S SUPPLEMENTAL DECLARATIONS

The Movant's counsel filed supplemental declarations on March 13, 2015. Dckt. 33 and 34.

The first declaration is of Kana Law, who is a paralegal at Movant's counsel's law firm. Dckt. 33. Ms. Law states that, prior to the January 27, 2015 hearing date, she accessed Debtor's docket and saw that the case was dismissed. On January 23, 2015, Ms. Law states she checked the the Court Calendar and saw that stated underneath the matter that "CASE DISMISSED 12/22/14." Ms. Law sent an email to Movant's counsel stating that case has been dismissed. Ms. Law admits that she mistakenly thought she was accessing the court's tentatives rather than just the calendar.

The second declaration is from Ms. Caley. Dckt. 34. After reciting the case history, Ms. Caley states that she erroneously interpreted the dismissal of the Debtor's case as a termination of the court's jurisdiction. Ms. Caley states that she believed the motion was automatically moot and removed from calendar. She apologizes for failing to find the tentative ruling from the January 27, 2015 hearing.

Ms. Caley states that on January 30, 2015, Ms. Caley was notified that the Debtor filed his fourth bankruptcy petition on January 14, 2015, Case No. 15-20250. On February 2, 2015, this case was dismissed by the court for failing to timely file his schedules and plan or to request an extension

As to the relief sought by Movant, Ms. Caley states that it has been her experience that some courts were willing to issue in rem relief from the automatic stay under certain circumstances to combat foreclosure scams. Ms. Caley argues that these courts used 11 U.S.C. § 105 to authorize such in rem orders. Ms. Caley argues that in the present case, the Debtor is clearly abusing the bankruptcy process through serial filings. While this is a case of a luxury vehicle rather than real property, Ms. Caley argues that the court's equitable powers should be applied to issue an in rem order to the vehicle. FN.2.

FN.2. The use, and misuse, of 11 U.S.C. § 105(a) has been the subject of a recent Supreme Court decision in *Law v. Siegel*, ___ U.S. ____, 134 S. Ct. 1188, 1194, 188 L. Ed. 2d 146 (2014). Congress has expressly provided for when a judge may prospectively block the automatic stay in future cases. Section 105(a) is not a grant of authority for one bankruptcy judge to "reach out and touch" other bankruptcy judges' cases. Such arguments by counsel are not supported by current law and the application of § 105 by the Supreme Court and Ninth Circuit Court of Appeals.

DISCUSSION

In the response filed by Movant's counsel, she states that upon learning that the case had been dismissed, she "assumed" that the court lost jurisdiction and did not appear at the prior hearing to prosecute the motion. This demonstrates that Movant does not seek an order confirming that no automatic stay was in effect, and the motion is denied without prejudice.

Request for Further Injunctive or Statutory Revision Relief in Motion

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

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

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

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

Ms. Caley's supplemental declaration does little to provide further support for this exceptional relief. Ms. Caley appears to be using the reasoning of a limited number of courts that issue rem orders as to real property to justify such application to the Vehicle. Solely relying on the court's 11 U.S.C. § 105 powers, Ms. Caley states that the repeated filing of Debtor requires such. The court is not convinced. Ms. Caley does not provide any citations for other court's that have issued in rem orders as to vehicles rather than real property. Ms. Caley appears to be attempting to have this court extend the extraordinary relief of in rem relief from stay to now include personal property and vehicle. The court declines such an invitation.

The request for this additional relief is denied.

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

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

The Motion to Confirm Termination or Absence of Stay filed by BMW Bank of North America, by and through its servicer, BMW Financial Services NA, LLC ("Movant") having been presented to the court, Movant having consciously chosen not to prosecute the motion, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

2. 11-21409-E-13 FRANCISCO GUILLEN MOTION TO SELL
CAH-1 C. Anthony Hughes 3-9-15 [55]

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 Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 9, 2015. By the court's calculation, 15 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.

Francisco Guillen, Jr. ("Debtor") filed the instant Motion to Sell on March 9, 2015. Dckt. 55.

However, a review of the proof of service shows that Debtor only provided 15 days notice. Pursuant to Fed. R. Bankr. P. 2002(a)(2), 21 days notice is necessary for "a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice."

The Debtor failed to give sufficient notice, and 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 Francisco Guillen, Jr., 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 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. 4410 28th Avenue, Sacramento, California

The proposed purchaser of the Property is Avonne Diggs and the terms of the sale are:

1. Purchase price is $165,000.00

2. The first mortgage, the only lien encumbering the Property, is $130,869.21 and there is cost of sale, in the amount of $4,275.00.

3. The proceeds to the Debtor are estimated to be $29,855.79, which shall be turned over to the Chapter 13 Trustee, for the benefit of the Class 7 creditors, to allow for their payment in full.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on March 11, 2015.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The terms of the proposed sale provide for fair market value of the Property and provides for the proceeds to be used towards payment to Class 7 creditors. Therefore, based on the foregoing, the Motion is granted.

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

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

The Motion to Sell Property filed by Francisco Guillen, 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 Francisco Guillen, Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Avonne Diggs or nominee ("Buyer"), the Property commonly known as 4410 28th Avenue, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for $165,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 58, and as further provided in this Order.

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

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

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

3. 15-20709-E-13 TIMOTHY/MARY SULLIVAN
LBG-1 Lucas Garcia

MOTION TO VALUE COLLATERAL OF SCHOOLS FCU
2-4-15 [8]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of School FCU ("Creditor") is granted and the secured claim is determined to have a value of $1,892.00.

The Motion filed by Timothy Joseph Sullivan and Mary Jean Sullivan ("Debtors") to value the secured claim of Schools FCU ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Chevrolet Aveo ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $1,892.00 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 October 1, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $3,073.00. 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 $1,892.00. *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 Timothy Joseph Sullivan and Mary Jean Sullivan ("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 [name of creditor] ("Creditor") secured by an asset described as 2007 Chevrolet Aveo ("Vehicle") is determined to be a secured claim in the amount of $1,892.00, 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 $1,892.00 and is encumbered by liens securing claims which exceed the value of the asset.

4. 09-46710-E-13 PHILLIP THAM **MOTION TO WAIVE 11 U.S.C. 1328 REQUIREMENT**
PGM-5 Peter Macaluso **2-12-15 [112]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Waive Joint Debtor's 11 U.S.C. § 1328 Requirement and Requirement to File a Statement of Completion of Course in Personal Financial Management 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 Waive Debtor's 11 U.S.C. § 1328 Requirement is granted.

The Motion to Waive Debtor's 11 U.S.C. § 1328 Requirement has been filed by Phillip Tham ("Debtor"). Debtor request that the court waive the 11 U.S.C. § 1328 requirement. FN.1.

FN.1. The Debtor also request that the court enter discharge for Debtor. First, the court notes that Fed. R. Civ. P. 18 does not permit multiple grounds for relief to be requested in the same motion. Further, the request for discharge is premature and not sought in the manner proscribed for Chapter 13 cases in this District. Presumably the discharge will follow, the court having waive the requirement which appears to have been the impediment.

Debtor is currently incarcerated out of state and Debtor argues is unable to comply with the requirements of 11 U.S.C. § 1328.

A Notice to Debtor of Competed Plan Payments and Obligation to File Documents was filed on January 14, 2015. Dckt. 106. The order approving the

Trustee's final report and discharging the Trustee was entered on March 10, 2015. Dckt. 118.

With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in the Plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. 11 U.S.C. § 1328 also requires that the Debtors complete a Personal Financial Management Course as well as filed a certificate of completion. Without a court waiving this requirement or a debtor completing and filing the certificate from the course, the court cannot grant a discharge.

Here, the issue is that Debtor is incarcerated out of state, preventing him from completing the course. The Debtor has completed his plan payments and merely awaiting discharge.

The Trustee has filed a non-opposition to the Motion on February 25, 2015.

In the instant case, the circumstances justify the waiver of the 11 U.S.C. § 1328 requirement to attend a Personal Financial Management Course and file a certificate of completion for Debtor.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Waive Joint Debtor's 11 U.S.C. § 1328 Requirement filed by Phillip Tham ("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 court waives the 11 U.S.C. § 1328 requirement to attend a Personal Financial Management Course and the filing of a certificate of completion for Debtor.

5. 14-27618-E-13 EJS-1 — JERRY WADLEY AND TRACY URBANO-WADLEY — Eric Schwab — CONTINUED MOTION TO CONFIRM PLAN — 11-26-14 [40]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2014. 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).

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

Jerry Wadley and Tracy Urbano-Wadley ("Debtors") filed the instant Motion to Confirm the Amended Plan on November 26, 2014. Dckt. 40.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on December 12, 2014. Dckt. 46. The Trustee objects on the ground that it appears that the Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). The Debtors are above the median income and proposes plan payments of $400.00 paid through August 2014 (4 months); then $300.00 for 56 months with a 58 % dividend to unsecured creditors, which totals $12,756.76. The Trustee argues the following grounds in support of his objection:

1. The Debtors' 2013 tax return provided to the Trustee reflects that the Debtors received a tax refund of $3,111.00. The Debtors have failed to propose to pay into the Plan any tax refunds received while in the 60 month Plan. The Statement of

Financial Affairs, question 2, does not disclose the tax refund income.

2. The Plan does not provide all of the Debtors' projected income for the applicable commitment period. The Trustee is not certain that the deductions on amended Schedule I for "401k loan payment" is reasonable and necessary for the maintenance and support of the Debtors or a dependent. The Debtors have not disclosed the amount of the loan and when it will be repaid. The plan payments do not increase after the loans are repaid, and the Debtors have not furnished evidence to show why the repayment of these loans are reasonably necessary. The Debtors must disclose this as the plan payment may need to increase after the loan is repaid.

3. The Additional Provisions of the Plan proposes

- Increase plan payments when 401k loan payments are completed within the plan term.

- Debtors will pay $400.00 total from August 2014 through November 2014.

- Debtors will pay $300.00 per month from December 2014 through July 2019.

The Debtors net disposable income on amended Schedule J reflects $300.00. The Debtors have failed to indicate when the 401k loans of $375.00 and $205.00 listed on amended Schedule I mature and when the plan payment will increase and by how much.

The Debtors amended Schedule I filed on November 26, 2014 reflects that Tracy Wadley's income has decreased from $3,833.00 gross to $2,848.00 gross without any explanation. Based on the Trustee's review of the Statement of Financial Affairs, question 1, and 2013 income return, the Trustee believes the amended schedule reflects her actual income. The Debtors provided a pay advice dated November 28, 2014 that reflects gross income of $1,369.72 bi-weekly, which more strongly supports the amended schedule than the original schedule.

CREDITOR'S OBJECTION

Donna Christin ("Creditor") filed an objection to the instant Motion on December 17, 2014. Dckt. 49.

The Creditor objects on the grounds that the amended Plan was filed in bad faith. The Creditor argues that the Debtors have committed perjury in willfully understating their income by a significant amount and have willfully violated 11 U.S.C. § 1325(a)(3), which requires that the plan be proposed in good faith and not by any means forbidden by law. The Creditor argues that the payment of the 401(k) loans as a debt in priority to other debts and the misstatement of the Debtors' financial reality on Schedule I and J are evidence of the filing being in bad faith.

DEBTORS' REPLY TO TRUSTEE'S OBJECTION

The Debtors filed a reply to the Trustee's objections on January 6, 2015. Dckt. 53. The Debtors reply to the Trustee's objections in order as such:

1. The Debtors will submit an order indicating that any tax refunds received while in the 60 month Plan will be paid into the Plan. In addition the Debtors will file an amendment to the Statement of Financial Affairs, question 2 to reflect the fact that they received a tax refund of $3,111.00 in 2013.

2. 11 U.S.C. § 362(b)(19) protects the "withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan. . .that is sponsored by the employer of the debtor. . .(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan." Because income from a debtor's wages are not protected by the automatic stay, "a plan may not materially alter the terms of a loan 11 U.S.C. § 362(b)(19) and amount required to repay such loan shall not constitute "disposable income" under section 1325." 11 U.S.C. § 1322(f)(19).

Therefore, the repayment of these loans are both reasonable and necessary. Indeed, if the amended plan did not permit the Debtors to make 401k loan payments, the Debtors would go into default on these obligations and would incur additional tax consequences and penalties.

3. The Debtors will submit an order expressly stating when the 401k loans will mature. There will be a presumption that the Plan payment will increase by the amount of each loan payment subject to rebuttal at that time if there has been a change in expenses or other circumstance.

DEBTORS' REPLY TO CREDITOR'S OBJECTION

The Debtors filed a reply to the Creditor's objections on January 6, 2015. Dckt. 51.

The Debtors first argue that the allegations that the Debtors inclusion of the 401k loans in the Plan is evidence of bad faith is unfounded and an incorrect reading of the court's prior holding. Debtors argue that the court's order on September 30, 2014 was concerning the continue contribution to the 401(k) and not the 401(k) repayment. The Debtors also make the argument that under 11 U.S.C. § § 362(b)(19) and 1322(f), the loan repayment is not "disposable income" for § 1325. The Debtors also highlight that the plan does provide that once the 401(k) loan is repaid that those monies will be put towards plan payments.

As to the Creditor's objection concerning the Debtors' income, the Debtors state that the Creditor fails to take into consideration that the Debtor is an hourly employee. Additionally, that the Debtor has to take certain days off to care for their daughter. The Debtors highlight that the Trustee stated in his opposition that he accepts the amended Schedule I as a truthful representation of the Debtors income.

JANUARY 13, 2015 HEARING

The court continued the hearing to 3:00 p.m. on March 24, 2015. Dckt. 56.

On January 14, 2015, the Debtors filed a supplemental Statement of Financial Affairs. Dckt. 55.

DISCUSSION

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

The main contention in both the Creditor's and Trustee's objection is the provision in the plan to continue the repayment of the 401(k) loan. The Debtors argue that under 11 U.S.C. § § 362(b)(19) and 1322(f), the loan repayment is not disposable income under 11 U.S.C. § 1325. The problem with this argument however is that the Debtors do not provide evidence how or why the 401(k) loan, in fact, qualifies under 11 U.S.C. § 362(b)(19). 11 U.S.C. § 362(b)(19) has a list of which programs qualify for to qualify under the section, including whether it falls under certain provision of the Internal Revenue Code of 1986 and whether it is under "section 408(b)(1) of the Employee Retirement Income security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986." It appears that the Debtors are merely arguing that "it is a 401(k) so it has to qualify." Unfortunately this is not sufficient.

However, the alternate of not having the 401(k) loan repayments to be allowed in the plan ends up being a detriment to the estate and the creditors. If the 401(k) loan payments were not allowed, the loan would have to be realized as income and taxed. This tax on the 401(k) loan would then be considered an administrative expense in the plan and paid ahead of the other classes. This alternative is not beneficial to any party.

As the Debtors' plan provides, once the 401(k) loan is repaid that $559.00 a month would then be put towards the plan, increases the plan payments. This is a much better result than the potential priority tax claim that would arise if the Debtors were to stop paying the 401(k) loan.

The court is willing to accept that this is a retirement plan through the Debtors' employer. The court also finds that, in weighing the 401(k) loan being paid through the plan versus having the 401(k) loan taxed, the best course of action is to have the 401(k) loan paid through the plan and then having the plan payments increase when the loan is paid off. Thus, the court finds that the plan was filed in good faith.

As to the Trustee's first and second objection, the Order Confirming the plan can add the provisions that provides for any tax refunds to be paid into the plan as well as giving the specifics of when the 401(k) loan will be paid off and by how much the plan payments will step up.

As to the Creditor's objection concerning the Debtors' income, a review of Schedule I and the attached pay stubs does not show any potential fraudulent activity in trying to deceive the court. The Debtors reply concerning the hourly nature of the Debtors' income and how it does fluctuate is evidenced by

the attached pay stubs. The Trustee appears to agree with the court's conclusion on this matter, stating that the amended Schedule I does in fact reflect the Debtor's income. Therefore, the Creditor's objection is overruled.

Therefore, with all the objections being addressed, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a), following the amendments to the plan discussed supra, and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on November 26, 2014 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, with the amendment stating when the 401(k) loan is paid and that upon the 401(k) loan the monthly plan payments shall be increased by $559.00 commencing with the first month after the 401(k) loan is paid in full and continuing through the end of the Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6.	**14-27618-E-13 MAS-2**	**JERRY WADLEY AND TRACY URBANO-WADLEY Eric Schwab**	**CONTINUED MOTION TO DISMISS CASE 10-28-14 [31]**

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2)

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 28, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is denied without prejudice.

Jerry Wadley and Tracy Suzanne Urbano-Wadley commenced the current bankruptcy case on July 25, 2014. By Order filed on October 3, 2014, the court denied confirmation of the proposed Chapter 13 Plan in this case. Dckt. 30. Donna M. Christin ("Christin") a creditor filed an objection to confirmation, which the court sustained. The court found that the Debtors making new monthly contributions of $459.00 and paying an additional $559.00 into their 401k plans to repay pre-petition loans precluded confirmation of the proposed plan. Civil Minutes, Dckt. 28.

On October 28, 2014, a month after denial of confirmation, Christin filed the present motion to dismiss the current Chapter 13 Case. The Motion states with particularity (Fed. R. Bankr. P. 9013) the following grounds upon which the requested dismissal of the case is based.

A. Christin is a judgment creditor of the Debtors, having obtained two small claims judgments prior to the commencement of this case.

B. Christin's claim in this case is approximately $17,000.00 and represents more than half of the debt scheduled by Debtors.

C. Though confirmation of the Original Plan was denied on September 30, 2014, no amended plan and motion to confirm were filed as of the October 28, 2014 filing of this Motion to Dismiss.

D. Christin is 80 years old and seeks to enforce the two small claims judgments.

Motion, Dckt. 31. Christin's counsel, not Christin, provides his declaration in support of the Motion. Dckt. 33. Counsel's testimony consists of recounting of the objection to confirmation and the court sustaining the objection. Counsel also testifies that his client is 80 years old and has received no payments on the judgment. Counsel shows no basis for having personal knowledge of these two facts testified to by him. Finally, counsel provides his legal conclusion that further delay is "extremely prejudicial" to Christin. No facts are provided as to what prejudice exists for the enforcement of a $17,000.00 claim. (It is common for a person who asserts that delay itself is actionable prejudice to provide testimony as to the negative financial impact on the creditor. None has been provided in support of the Motion.)

RESPONSE OF DEBTORS

The Debtors have not provided any evidence in opposition to the Motion, but merely have directed their attorney to file arguments in response. Dckt. 35. In the Response counsel for Debtors argues that since the denial of confirmation the Debtors have requested that their voluntary 401k monthly contribution be discontinued. Though no evidence is provided, it is argued that the first paycheck without the 401k contribution was for October 31, 2014.

Counsel for Debtors further argues that one of the Debtors' parents passed away (on an unstated date), thereby distracting the Debtors from addressing the court's denial of confirmation. However, the Debtors will filed an amended plan and have the motion set for hearing on January 13, 2015. (Which appears to be the first available date on the court's calendar that a proper 42 day noticed motion to confirm can be set for hearing.)

NOVEMBER 18, 2014 HEARING

At the November 18, 2014 hearing, the court conditionally granted the Motion and ruled that the case will be dismissed without further hearing if the Debtors have not filed and served an amended plan on or before November 30, 2014.

JANUARY 13, 2015 HEARING

The court continued the Motion to 3:00 p.m. on March 24, 2015 to be heard in conjunction with the Motion to Confirm Plan.

DISCUSSION

The Debtors filed an amended plan on November 26, 2014. Dckt. 44. The court confirmed the amended plan on March 24, 2015. The Debtors' amended plan addresses the concerns in the Motion to Dismiss. With no grounds remaining to dismiss the case, 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 Dismiss the Chapter 13 case filed by Donna Christin, a 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 the Motion is denied without prejudice.

7. 14-21319-E-13 MARK/SARAH ANN HANSEN
BB-5 Bonnie Baker

CONTINUED MOTION TO VALUE COLLATERAL OF CORNERSTONE COMMUNITY BANK
1-20-15 [71]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Value secured claim of Cornerstone Community Bank ("Creditor") is ------

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

1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in September 22, 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $17,434.57.

FEBRUARY 25, 2015 HEARING

Debtor notified the court that the parties request that the hearing be continued to allow them to complete negotiations on a an agreed value for the secured claim.

CREDITOR'S OPPOSITION

The Creditor filed an opposition on March 10, 2015. Dckt. 105. The Creditor argues that the proper valuation for the Vehicle is $14,201.00 based on the information provided for by Kelley Blue Book. The Creditor has properly authenticated the report and is accepted as a market report or commercial publication generally relied on by the public or by persons in the automobile sale business. Fed. R. Evid. 803(17).

Creditor also states that counsel for Creditor and counsel for Debtor anticipate filing a further stipulation prior to the hearing.

DISCUSSION

At the hearing, ------

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Mark Jon Hansen and Sarah Ann Monica Hansen ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, the parties requesting that the hearing be continued, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that -----

8. 15-20119-E-13 BMV-4 GLENN/ROSEMARIE VILLALUNA Bert Vega MOTION TO VALUE COLLATERAL OF BANK OF AMERICA HOME LOANS 2-19-15 [55]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Bank of America Home Loans, a division of Bank of America, 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 Glenn Thomas Villaluna and Rosemarie Cantiller Villaluna ("Debtors") to value the secured claim of Bank of America Home Loans, a division of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 511 Cove Court Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $389,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Glenn Thomas Villaluna and Rosemarie Cantiller Villaluna ("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 Bank of America Home Loans, a division of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 511 Cove Court Fairfield, California, is determined to be a secured claim in the amount of $0.00, and

the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $389,000.00 and is encumbered by senior liens securing claims in the amount of $412,170.31, which exceed the value of the Property which is subject to Creditor's lien.

9. 15-20119-E-13 BMV-5 GLENN/ROSEMARIE VILLALUNA Bert Vega
MOTION TO VALUE COLLATERAL OF CHASE HOME FINANCE, LLC 2-19-15 [60]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Chase Home Finance LLC, a division of JP Morgan Chase ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Glenn Thomas Villaluna and Rosemarie Cantiller Villaluna ("Debtors") to value the secured claim of **Chase Home** Finance LLC, a division of JP Morgan Chase ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 511 Cove Court, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $389,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank*

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

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $412,170.31. A second deed of trust secures a claim with a balance of approximately $49,920.98. Creditors third deed of trust secures a claim with a balance of approximately $19,075.76. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Glenn Thomas Villaluna and Rosemarie Cantiller Villaluna ("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 Chase Home Finance LLC, a division of JP Morgan Chase secured by a third in priority deed of trust recorded against the real property commonly known as 511 Cove Court, Fairfield, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $389,000.00 and is encumbered by senior liens securing claims in the amount of $412,170.31, which exceed the value of the Property which is subject to Creditor's lien.

10. 10-33522-E-13 HLG-1 **JOHN/ANN LAMMON** **Kristy Hernandez** **MOTION TO APPROVE LOAN MODIFICATION 2-18-15 [92]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is continued to 3:00 p.m. on April 28, 2015. The Debtors shall file and serve supplemental pleadings on or before April 17, 2015.

The Motion to Approve Loan Modification filed by John and Ann Lammon ("Debtor") seeks court approval for Debtor to incur post-petition credit. CitiMortgage, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,716.37 for sixty months then $1,903.22 for 203 months. The modification will reduce the interest rate to 2.00% for the first 60 months then 3.98% for 203 months. The modification will capitalize the pre-petition arrears into the new principal balance of $496,059.56.

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

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 97. The Trustee states that he has no objection to the terms of the loan modification. However, the Trustee is uncertain the loan modification agreement is being offered by the party who is the owner or holder of the existing note and, if it is not, the Trustee is not certain what authority the party offering the modification has to offer it.

The Debtor filed a copy of the Loan Modification which lists Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 as Lender. Dckt. 95, Exhibit C. However, on schedule D, the Debtors list the creditor of the first mortgage being Creditor. Creditor filed Proof of Claim No. 4 on July 22, 2010 claiming a secured claim in the amount of $508,983.39 and $27,280.65 in arrears. Attached to the Proof of Claim No. 4 is an Assignments of Deed of Trust from Mortgage Electronics Registration Systems, Inc. as nominee for Lehman Brothers Bank, FSB, a Federal Savings Bank to Creditor.

A Notice of Assignment of Claim and Transferee Notice of Payments was filed on December 16, 2013 from Creditor to Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1. Dckt. 85. The assignment states "Transferee does hereby give notice to the Court that it has accepted to be the servicing agent and//or beneficiary through an assignment and transfer of the real estate property included in the claim for the above referenced debtors from CitiMortgage, Inc."

The Trustee is uncertain whether Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 is actual the creditor or if it has the authority to enter into a loan modification. The Assignment merely states that Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 is accepting to be "servicing agent and/or beneficiary" without specifying what rights it may have.

DISCUSSION

The Trustee's objection is well-taken. A review of the Proof of Claim No. 4 shows the Assignment to Creditor but does not have any evidence of the transfer of rights from Creditor to Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1. While Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 is listed as the "Creditor" on Proof of Claim No. 4, the claim itself still lists Creditor as the creditor. Furthermore, the Notice of Assignment of Claim and Transferee Notice of Payments merely states that Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 has accepted servicing rights but not what rights it has to exercise any sort of modification on the underlying mortgage.

The court will not issue "maybe effective" orders modifying the terms of a loan to only later have the real creditor come and state that they never approved such modification.

To allow time for the Debtors to file supplemental pleadings to show that Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 has the authority to enter into a modification, the Motion is continued to 3:00 p.m. on April 28, 2015. The Debtors shall file and serve supplemental pleadings on or before April 17, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by John and Ann Lammon having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is continued to 3:00 p.m. on April 28, 2015.
>
> **IT IS FURTHER ORDERED** that the Debtors shall file and serve supplemental pleadings on or before April 17, 2015.

11. 14-27826-E-13 ROLAND/IMELDA REGALA MOTION TO MODIFY PLAN
SDB-1 Scott de Bie 2-5-15 [30]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 5, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

12. 14-31030-E-13 RAQUEL BLAKENEY **MOTION TO CONFIRM PLAN**
SJS-1 Scott Johnson **2-6-15 [24]**

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 February 6, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

Raquel Blakeney ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 6, 2015. Dckt. 24.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 25, 2015. Dckt. 35. The Trustee objects to the plan stating that the Debtor unfairly discriminates against unsecured creditors under 11 U.S.C. § 1322(b)(1). The plan proposes payment of 52.53% to unsecured creditors. However, Debtors' amended Schedule J lists payments outside the plan for student loan debt of $250.00 per month. Debtor is proposing to pay student loan debt in full outside the plan, while paying less than 100% to other

general unsecured creditors.

DISCUSSION

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

The Trustee's objection is well-taken. Pursuant to 11 U.S.C. § 1322(a)(3), if a plan classifies claims, the plan "shall provide the same treatment for each claim within a particular class." The Ninth Circuit Bankruptcy Appellate Plan has explicitly found that the nondischargeable nature of student loans debts, absent more, is an insufficient basis for treating student loans preferentially. *In re Sperna*, 173 B.R. 654 (B.A.P. 9th Cir. 1994).

Though afforded the opportunity, Debtor has not responded to the Trustee's opposition to the motion to confirm. In the motion and supporting pleadings Debtor offers no explanation as to why it would be proper to prefer the student loan and not pay it as a Class 7 claim.

Though it was not worth the Debtor's and counsel's time to provide an explanation, creating the appearance that they were attempting to "slip one by the court" and improperly prefer the nondischargeable student loan debt, the court has considered what impact this direct payment has on the creditors holding general unsecured claims.

The court notes that on Schedule F Debtor states under penalty of perjury that the obligation owed for student loans is 32,118.00. Dckt. 1 at 21. The Chapter 13 Plan lists general unsecured claims of $27,289.24. The Chapter 13 Plan provides for a monthly plan payment of $860.00 for 60 months. Dckt. 26. The expenses and claims to be paid before the Class 7 dividend are: (1) $2,500 in attorney's fees, (2) Chapter 13 Trustee expenses, estimated to be 6% of the plan payments, and (3) Class 2 secured claims totaling $31,394.26.

The court computes in the following tables the projected Class 7 dividend including the student loan and the additional $250.00 a month to the plan payment and the plan as proposed.

Paying Student Loan Outside of Plan		Including Student Loan In Class 7	
1. Total Plan Payments	$51,600	1.	$66,000
2. Trustee's Fees	($ 3,096)	2.	($ 3,960)
3. Attorney's Fees	($ 2,500)	3.	($ 2,500)
4. Class 2 Payments	($31,394.26)	4.	($31,394.26)
Monies for Class 7	$14,609.74		$28,145.74

When the student loan debt is included, the general unsecured claims total $59,407.24. With $28,145.74 to fund the Class 7 claims, the Class 7 dividend would be 47.3%.

The proposed plan provides for a Class 7 dividend of not less than 52.53%. With $14,609.74 to fund the Class payments and general unsecured claims of $27,289.24, the dividend computes to be 53.5%.

By paying the student loan debt outside the plan, the other creditors holding general unsecured claims are not prejudiced. In fact, their dividend increases slightly. Therefore, the "special" treatment for the student loan debt does not unfairly discriminate against the other unsecured claims.

Therefore, the amended Plan does comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

ADJUSTMENT OF ATTORNEYS' FEES

The proposed plan provides for the payment of $4,000.00 in legal fees to Debtor's counsel. $1,500.00 was paid prior to the commencement of the case (being held as a retainer) and an additional $2,500.00 to be paid through the plan. However, the $4,000.00 in legal fees would include the above analysis, which was not done by counsel. It is inappropriate to offload that work to the court. Therefore, the court decreases the legal fees by $350.00 to account for this deficiency.

The order confirming the plan shall allow counsel for Debtor $3,650.00 in legal fees, with $2,150.00 to be paid through the plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 6, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan allowing for $3,650.00 in attorney's fees for Debtor's counsel, with $2,150.00 to be paid through the plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. 10-30532-E-13 PAUL/ANGELA ACCOMAZZO MOTION TO SELL
SDB-4 Scott de Bie 3-5-15 [53]

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 Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 5, 2015. By the court's calculation, 19 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.

Paul and Angela Accomazzo ("Debtors") filed the instant Motion to Sell on March 5, 2015. Dckt. 57.

However, a review of the proof of service shows that Debtor only provided 19 days notice. Pursuant to Fed. R. Bankr. P. 2002(a)(2), 21 days notice is necessary for "a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice."

The Debtors failed to give sufficient notice, and 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 Paul and Angela Accomazzo, 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. 219 Walnut Street, Woodland, California

The proposed purchaser of the Property is Joel Del Rio and Maria Salmeron and the terms of the sale are:

1. Purchase price is $340,000.00

2. All creditors with liens and security interests encumbering the Property not voluntarily released will be paid in full simultaneously with the transfer of title to the Buyer or held by the escrow holder until agreement by the parties or further court order.

3. The all costs of sale, such as escrow fees, title insurance, and commissions will be paid in full from the proceeds.

4. Sale price is all in cash

5. Debtors' confirmed plan calls for payment of $23,000.00 from the net proceeds of this sale to the Trustee in furtherance of the plan.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on March 9, 2015.

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

Based on the evidence before the court, the court determines that the proposed sale is in the

best interest of the Estate. The terms of the proposed sale provide for fair market value of the Property and provides for the proceeds to be used towards the plan. Therefore, based on the foregoing, the Motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property filed by Francisco Guillen, 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 Paul and Angela Accomazzo, Chapter 13 Debtors, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Joel Del Rio and Maria Salmeron or nominee ("Buyer"), the Property commonly known as 219 Walnut Street, Woodland, California ("Property"), on the following terms:
>
> 1. The Property shall be sold to Buyer for $340,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 56, and as further provided in this Order.
>
> 2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
>
> 3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
>
> 4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

14. 13-31433-E-13 SHARON LEASURE-BROWN MOTION TO MODIFY PLAN
SNM-1 Stephen Murphy 2-9-15 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 9, 2015. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

Sharon Leasure-Brown ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 9, 2015. Dckt. 24.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 31. The Trustee objects on the following grounds:

1. The Trustee is uncertain Debtor has the ability to make the proposed plan payments. Debtor is delinquent $550.00 under the terms of the proposed plan.

2. The Trustee is concerned Debtor will not be able to make the proposed plan payment in light of the nearly $1,900.00 in unexplained increased expenses over Debtor's prior Schedule J.

> Of particular note is the increase in childcare and education costs from $0.00 to $400.00, transportation costs from $650.00 to $900.00, and an increase from $40.00 to $160.00 for charitable contributions. Additionally, Debtor's Supplemental Schedule I now reflects $300.00 in voluntary retirement plan contributions as compared to Debtor's prior Schedule I where it was $0.00.

DISCUSSION

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

The Trustee's objections are well-taken. First, the fact the Debtor is delinquent in plan payments is sufficient grounds to deny confirmation. The inability to be current on plan payments is evidence that the Debtor cannot abide by the terms of the plan. The Debtor has not provided any evidence that the Debtor has cured the delinquency. Therefore, the plan is not confirmable.

Second, the Debtor has failed to explain the increase in expenses and voluntary deductions. The relatively dramatic increase in child care, transportation, charitable contributions, and voluntary retirement plan contributions all raise questions as to whether the supplemental Schedules I and J are reflections of the Debtor's financial reality. Absent explanation from the Debtor, the court does not believe the Debtor's projection is in good faith. This is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(3).

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.

15. 14-32440-E-13 TINA BAUGHMAN **OBJECTION TO CONFIRMATION OF**
DPC-1 Bruce Dwiggins **PLAN BY DAVID P. CUSICK**
2-18-15 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2015. 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 failed to appear and be examined at the First Meeting of Creditors held on February 12, 2015. The Meeting was continued to March 12, 2015 at 10:30 a.m.

2. The Debtor is $570.00 delinquent in plan payments. The Debtor has paid $0.00 into the plan. The Debtor appears aware of the

> need to make plan payments because their prior case no. 14-28001 was dismissed for failure to make plan payments on December 19, 2014. Case No. 14-28001, Dckt. 20.

The Trustee's objections are well-taken. First, at the continued Meeting of Creditors, the Debtor appeared. Therefore, the Trustee's first objection is overruled.

However, the Debtor's delinquency in plan payments is grounds to deny confirmation of the proposed plan. 11 U.S.C. § 1325(a)(6) requires that the debtor be able to make all payments under the plan and to comply with the plan. Failure to make plan payments is evidence of Debtor's inability to comply with the terms of a proposed plan. As the Trustee notes, the Debtor has previously been in a Chapter 13 case and knows the duty to make plan payments. Debtor has not offered any supplemental pleadings showing that the delinquency has been cured. 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 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.

16. 14-21142-E-13 LBG-7 THOMAS LISLE AND BARBARA TREAT Lucas Garcia

MOTION TO APPROVE NOMINATION OF DEBTORS' REPRESENTATIVE 2-5-15 [101]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The Motion to Substitute is granted.

Joint Debtor, Barbara Treat, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Thomas Lisle. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtors filed for relief under Chapter 13 on February 6, 2014. On June 18, 2014, the debtor's First Modified Chapter 13 Plan was confirmed. On December 12, 2014, the debtor passed away. The Joint Debtor asserts that she is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on February 5, 2015. Dckt. No 109. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that she will continue to prosecute this case in a timely and reasonable manner.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on February 26, 2015.

DISCUSSION

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

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context.

> Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also, *Hawkins v. Eads*, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Mrs. Treat has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. No 109. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Barbara Treat, as the spouse of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Thomas Lisle. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Barbara Treat is substituted as the successor-in-interest to Thomas

Lisle and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

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

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

Final Ruling: No appearance at the March 24, 2015 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, Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 48 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 13 of Employment Development Department is sustained and the claim is disallowed in its entirety.

LaQueta Martin, the Chapter 13 Debtor, ("Objector") requests that the court disallow the claim of Employment Development Department("Creditor"), Proof of Claim No. 13 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $1,837.78. Objector asserts that the Claim has not been timely filed. *See* Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case is September 3, 2014 and October 28, 2015 for government proof of claims. Notice of Bankruptcy Filing and Deadlines, Dckt. 9.

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).

The deadline for filing a Proof of Claim in this matter was September 3, 2014 and October 28, 2015 for government proof of claims. The Creditor's Proof of Claim was filed October 29, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. The Objection to the Proof of Claim 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 Claim of Employment Development Department, Creditor filed in this case by LaQueta Martin, Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 13 of Employment Development Department is sustained and the claim is disallowed in its entirety.

18. 10-27644-E-13 SAC-1 CARLITO/VIRGINIA RODRIGUEZ Jeremy Heebner

MOTION TO VALUE COLLATERAL OF CITIFINANCIAL SERVICES, INC. 3-9-15 [38]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March, 10 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Carlito Viray Rodriguez and Virginia Acevedo Rodriguez ("Debtors") to value the secured claim of Citifinancial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7540 Whitmore Street, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $250,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid.

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

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $307,000.00. Creditors second deed of trust secures a claim with a balance of approximately $27,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Carlito Viray Rodriguez and Virginia Acevedo Rodriguez ("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 Citifinancial Services, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 7540 Whitmore Street, 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 $250,000.00 and is encumbered by senior liens securing claims in the amount of $307,000.00, which exceed the value of the Property which is subject to Creditor's lien.

19. 10-48245-E-13 JEREMY/CONNIE HAYS
RK-4 Richard Kwun

MOTION FOR DISBURSEMENT OF THE SETTLEMENT MONIES HELD BY THE CHAPTER 13 TRUSTEE
2-20-15 [153]

Tentative Ruling: The Motion for Disbursement of the Settlement Monies Held by the Chapter 13 Trustee 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 20, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion for Disbursement of the Settlement Monies Held by the Chapter 13 Trustee 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 for Disbursement of the Settlement Monies Held by the Chapter 13 Trustee is granted.

Jeremy and Connie Hays ("Debtors") filed the instant Motion for Order Authorizing the Disbursement of the Settlement Monies Held by the Chapter 13 Trustee on February 20, 2015. Dckt. 153. Debtors request for an order permitting the disbursement of insurance proceeds for insurable losses pursuant to their vehicle insurance policies and to the extent of their claimed exemptions.

Debtors have reopened their case to amend their schedules to claim an exemption in the insurance loss payout. On November 21, 2014, the Debtors claimed an exemption under California Code of Civil Procedure § 703.140(b)(5) in the amount of $7,920.00 in the settlement amount for the bad faith suit against the insurer.

The Debtors argues that judicial estoppel does not apply because the amendment was made when the case was reopened to administer the settlement and the subsequent claim of exemptions were filed when the settlement was ripe for distribution by the Debtors' vehicle carrier. The Debtors argues that their interest in the claim was not initially listed because the Debtors subjectively believed the claim had zero value.

TRUSTEE'S RESPONSE

David Cusick filed a response on February 25, 2015. Dckt. 160. The Trustee states that the Debtors failed to disclose how the Debtors seek to have the remainder of the settlement distributed. On February 3, 2015, the court issued an order which designated $14,435.00 of the settlement is to be paid to Andrew Kalnoki, special counsel, for his professional fees and costs. Special counsel is to apply the $10,000.00 retainer toward the fees and costs and the Trustee is to disburse $4,435.00 from the $35,000.00 settlement. After $4,435.00 is paid to special counsel, the settlement balance would be $30,565.00, of which Debtors apply for their exempt portion $7,920.00, which would leave a settlement balance of $22,645.00. The Trustee believes the Debtors may seek the balance $22,645.00 to be paid into the plan to be disbursed toward unsecured claims, but the Motion fails to indicate such.

Additionally, as of the time of the Trustee's response, he had not received any settlement funds.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's response on February 27, 2015. Dckt. 165. The Debtors state that they agree with the Trustee's accounting and urges the court to: (1) distribute the exempt amount of $7,920.00 to the Debtors on account of their valid vehicle insurance policy and (2) allow "the balance [of] $22,645.00 to be paid into the plan to be disbursed toward unsecured claims[.]"

TRUSTEE'S SUPPLEMENTAL DECLARATION

Jennifer Hand, an employee of the Trustee, filed a supplemental

deceleration on March 16, 2015. Dckt. 167. Ms. Hand states that the Trustee has received $10,000.00 from Liberty Mutual and $25,000.00 from Progressive Insurance for a total of $35,000.00 on February 26, 2015. The Trustee has paid $4,435.00 to Andrew Kalnoki on March 11, 2015 per the terms of the court's prior order on February 4, 2015.

DISCUSSION

A review of the Debtors' supplemental schedules filed on November 21, 2014 shows that the Debtors exempted the settlement funds under California Code of Civil Procedure § 703.140(b)(5) in amount $7,920.00.

The Trustee has received the settlement funds and are holding them awaiting order of the court on the proper disbursement.

The court finds that the Debtors have properly exempted $7,920.00 of the settlement funds and is entitled to have them disbursed to them. The remaining $22,645.00 shall be paid into the plan to be disbursed toward unsecured claims.

Therefore, the Motion is granted. The Trustee is authorized to disburse $7,920.00 to the Debtors and authorized to disburse the remaining $22,645.00 into the plan to be disbursed toward unsecured claims.

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 Disbursement of the Settlement Monies Held by the Chapter 13 Trustee filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted.
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to disburse $7,920.00 to the Debtors and to pay the remaining $22,645.00 into the plan to be disbursed to creditors holding general unsecured claims, and the related administrative expenses, under the terms of the confirmed plan.

20. 14-32345-E-13 DPC-1 BARBARA GIAMMARCO Lucas Garcia

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

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

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

2. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I (Dckt. 1, pgs 21-22) lists gross monthly income of $200.00 from family assistance, $1,568.00 from

social security, and $1,011.86 from retirement, for total income of $2,779.86. Debtor has not filed a Declaration regarding the $200.00 family assistance, setting forth the person making that contribution and their ability and willingness to provide this contribution throughout the 5 year term of the plan.

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

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

DEBTOR'S ATTORNEY'S RESPONSE

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

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

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

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

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 24, 2015 to allow the Debtors to file and serve supplemental documents on or before March 17, 2015. Dckt. 25.

DEBTOR'S SUPPLEMENTAL DECLARATION

On March 19, 2015, two days after the court set deadline to file, the Debtor filed a supplemental declaration of Anthony Giammarco, Debtor's son, in support of the Motion. Dckt. 28. The Declaration states that Mr. Giammarco

supports the Debtor in transportation, entertainment, recreation, and food. Mr. Giammarco cares for Debtors's well being by taking care of household chores and taking her to doctor's appointments. Mr. Giammarco also supplements Debtor's living needs by $200.00 per month for incidental expenses.

In return for this assistance, Mr. Giammarco states that the Debtor allows him and his son to live in the home with her. Mr. Giammarco states that he pays for all the expenses incurred by himself or his son. Mr. Giammarco state that he is gainfully employed and does not foresee any change in employment. Mr. Giammarco attests that none of the expense listed by Debtor include any support for Mr. Giammarco or his son.

DISCUSSION

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

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

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

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

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

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

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

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

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

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

F. Transportation.....$ 0.00

G. Entertainment.....$ 0.00

H. Taxes.....$ 0.00

Schedule J, Dckt. 1 at 23-24.

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

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

While the untimely supplemental declaration of Debtor's son provides a bit more context of the family relationship, many of these questions remain unanswered and instead appears to be a more detailed repetition of the Debtor's son's earlier declaration.

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

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

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

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

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

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

21. 15-20145-E-13 SANTOKH MAHAL **OBJECTION TO CONFIRMATION OF**
DPC-1 Pro Se **PLAN BY DAVID P. CUSICK**
2-25-15 [31]

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

The case having previously been dismissed on March 18, 2015 (Dckt. 41), the Objection is dismissed as moot.

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

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

22. 15-21449-E-13 BALBIR/SAWARNJIT SEKHON
MRL-1 Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF TRI COUNTIES BANK
3-9-15 [10]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March, 10 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Motion to Value filed by Balbir Singh Sekhon and Sawarnjit Kaur Sekhon ("Debtors") to value the secured claim of Tri Counties Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4017 Calliope Court, Redding, California

("Property"). Debtor seeks to value the Property at a fair market value of $400,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $409,605.00. Creditors second deed of trust secures a claim with a balance of approximately $79,600.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Balbir Singh Sekhon and Sawarnjit Kaur Sekhon ("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 Tri Counties Bank secured by a second in priority deed of trust recorded against the real property commonly known as 4017 Calliope Court, Redding, 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 $400,000.00 and is encumbered by senior liens securing claims in the amount of $409,605.00, which exceed the value of the Property which is subject to Creditor's lien.

23. 13-24250-E-13 MATTHEW/CLARA SWIFT — MOTION TO MODIFY PLAN
RSG-5 Robert Gimblin — 1-27-15 [48]

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

The Debtors having filed a "Withdrawal of Motion" for the pending Motion to Confirm on March 6, 2015 (Dckt. 57), 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 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.

A Motion to Confirm Plan having been filed by the Debtors, the Debtors 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 Modify Plan is dismissed without prejudice.

24. 13-26052-E-13 ANDREA BROOKS **MOTION TO SELL**
SJS-2 Scott Johnson **3-10-15 [37]**

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 NOT 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 March 10, 2014. By the court's calculation, 14 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 Andrea Brooks, 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. 7620 Tea Berry Way, Sacramento, California, APN 115-1160-044-0000

The proposed purchaser of the Property is Samuel Chang and the terms of the sale are:

1. Purchase Price of $180,000.00.

2. The sale would be a short sale.

3. Broker's commission is $10,800.00.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on March 18, 2015. Dckt. 49. The Trustee has no objection to the proposed Motion. The Trustee notes that the Debtor scheduled Bank of America, N.A.'s First Deed of Trust to be paid outside the plan. On July 24, 2013, RCO Legal, OS filed a claim in the amount of $160,296.76 that included arrears in the amount of $26,634 that are not provided for in the plan.

The Trustee also notes that the Debtor scheduled Bank of America, N.A.'s Second Deed of Trust as a Class 2 claim to be paid through the plan. The Debtor has negotiated a lien release with this creditor for $6,000.00. The Trustee notes that the Motion does not clarify if the allowed unsecured debt will be satisfied in the sales transaction or if the Trustee is to continue paying this debt through the plan.

Additionally, the Debtor's Motion does not provide for the $3,000.00 HAFA incentive stated in the Estimated Settlement Statement nor where Debtor is relocating. Dckt. 40, Exhibit B. The Trustee asks if the Debtor has move that the Debtor file a supplemental Schedule I and J.

DISCUSSION

First, the Debtor has failed to provide sufficient notice. While the Debtor is moving under Local Bankr. R. 9014-1(f)(2), Fed. R. Bankr. P. 2002(a)(2) requires that for Motions to Sell that a minimum of 21 days notice is given. Here, the Debtor only provided 14 days notice. This is an independent ground to deny the Motion.

Second, the Debtor fails to attach the proposed sale agreement. While the Debtor provides the Estimated Settlement Statement, the Debtor does not provide the actual sale agreement between Debtor and Buyer.

Lastly, as the Trustee notes, the Motion and the Estimated Settlement Statement do not fully disclose the treatment of certain claims, namely Bank of America, N.A.'s second deed of trust, and whether the Debtor has received the HAFA incentive. The court cannot determine whether the sale is in the best interest of the Debtor, estate, or creditors when the Debtor has failed to provide all the terms and conditions of the sale.

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 Andrea Brooks, Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

25. 14-28452-E-13 SATINDERJIT BAINS **CONTINUED MOTION TO MODIFY PLAN**
MAC-1 Marc Carpenter **12-15-14 [18]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December, 15 2014. By the court's calculation, 50 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.

Satinderjit Bains ("Debtors") filed the instant Motion to Modify Plan

on December 15, 2014. Dckt. 23. Debtor is seeking to modify their confirmed Plan in the following manner: payments of $771.00 shall be paid stemming from the original plan (October-December), followed by 57 payments of $320.84 commencing on December 25, 2014, for the duration of the Debtor's Chapter 13 plan. Said plan is estimated to pay 94.1% to general unsecured.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on January 20, 2015. Dckt. 25. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the treatment for creditor Carfinance Capital. The Debtor's proposed modified plan does not list the creditor Carfinance Capital. The instant motions states that "On September 23, 2014, Debtor's car was stolen...and Debtor's insurance determined the car was a total loss".

However, under the confirmed plan (Dckt. 17) said creditor was listed as a secured creditor with a claim in the amount of $16,995.42. The Trustee has since disbursed $1,100.89, which is not accounted for or authorized under the modified plan.

2. The Debtor failed to file Supplemental Schedules I & J. The Debtor's instant motion proposes to reduce plan payments and the supporting declaration (Dckt. 18) states that Debtor's brother contributes to her monthly income. However, there have been no filings of amended Schedules of I or J.

3. The Debtor's plan filed December 15, 2014 is not properly signed. Pursuant to Local Bankr. R. 9004-1(c) "the name of the person signing the document shall be typed underneath the signature". However, Debtor's Plan (Dckt. 23) fails to comply with this rule.

BANK OF AMERICA, N.A.'S OBJECTION

Bank of America, N.A. ("Creditor") filed an objection to the instant Motion on January 20, 2015. Dckt. 28. The Creditor objects on the following grounds:

1. Lack of Adequate Funding. The pre-petition arreareages total the amount of $2,179.95, but the Debtor's plan states that number as $0.00. Furthermore, the Debtor's plan states that no pre-petition defaults exist, and only the post petition payments will be paid. Therefore, the Debtor's plan fails to comply with 11 U.S.C. §361 by not providing adequate protection to Creditor's interests, and does not meet the "feasibility" requirement of 11 U.S.C. §1325(a)(6).

2. Improper Attempt to modify loan in violation of 1322(a)(2). The Debtor's Plan attempts to modify Creditor's claim to a principal residence. The attempt by the Debtor to claim there are no pre-petition arrears requires the court to take clarify whether the Creditor is authorized by the court to apply post-petition payments to pre-petition arrears, or whether the pre-petition arrears are intended to be paid by the Chapter 13 Trustee through the modified Plan.

FEBRUARY 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 3, 2015 based on the Debtor having a pending Motion to Approve Loan Modification with the Creditor. Dckt. 36.

On February 24, 2015, the court granted the Debtor's Motion to Approve Loan Modification. Dckt. 39.

DISCUSSION

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

The approval of the loan modification properly addresses the Creditor's concerns and, therefore, the Creditor's objections are overruled.

However, the Trustee's objections continued to be well taken. The proposed plan does not address the treatment of Carfinance Capital after the secured vehicle was allegedly stolen, especially since it still lists the creditor with a claim in the plan. The court cannot determine the feasibility of the plan without Supplemental Schedules I and J. Lastly, while it may be merely a scrivener's error, the proposed plan fails to have the Debtor's signature which raises concerns over whether the Debtor knows the contents of 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.

26. 14-28953-E-13 JOHN/MARY ANDERSON MOTION TO CONFIRM PLAN
DAO-1 Dale Orthner 2-4-15 [31]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. 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.

John and Mary Anderson ("Debtors") filed the instant Motion to Confirm the Amended Plan on February 4, 2015. Dckt. 31.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 24, 2015. Dckt. 44. FN.1.

FN.1. The court is reviewing the Trustee's amended Objection rather than the originally filed objection which was filed earlier the same day.

The Trustee objects on the following grounds:

1. There is the appearance of over payment of the plan. The

Debtors' original plan filed on September 3, 2014 called for plan payments of $2,934.46 for 60 months. Dckt. 5. The Debtors have paid $11,737.48 into the plan to date. The proposed amended plan calls for payments of $1,998.45 for 60 months. Based on the proposed amended plan, the Debtors have created an "appearance" of overpayment of plan by $3,744.04 and the Debtor would not have to make another payment into the plan for two months.

2. The plan may not be proposed in good faith and may be causing unfair discrimination to the unsecured creditors. 11 U.S.C. § § 1325(a)(3) and 1322(b)(1). According to Schedule J, Debtors are paying an ongoing student loan payment. Debtor fails to disclose this treatment to creditors in their Chapter 13 Plan as either a Class 3, 4, or 5, or general unsecured to be paid directly by the Debtors in the additional provisions. While the payment is revealed on Schedule J, that has not been served on creditors.

DISCUSSION

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

The Trustee's objection is well-taken.

First, a review of the plan does show that the Debtors list a lesser amount of monthly payments than what was listed in the originally filed plan. The Debtors have been operating under the terms of the originally filed plan from September 3, 2014 to February 4, 2014. This resulted in the Debtor's paying $11,737.48 into the plan. However, the Debtors are now attempting in the proposed amended plan to lessen the plan payment for the entire life of the case thus far, giving the illusion of overpayment to allow for two months of "breathing room" before restarting payments under the lesser plan payments of the proposed plan. This is not proper. The Debtors have failed to properly provide for the prior plan payments in the plan and thus the proposed plan cannot be confirmed.

Second, pursuant to 11 U.S.C. § 1322(a)(3), if a plan classifies claims, the plan "shall provide the same treatment for each claim within a particular class." The Ninth Circuit Bankruptcy Appellate Plan has explicitly found that the nondischargeable nature of student loans debts, absent more, is an insufficient basis for treating student loans preferentially. *In re Sperna*, 173 B.R. 654 (B.A.P. 9th Cir. 1994).

Here, the Debtors appear to be attempting to hide a payment to an unsecured student loan creditor from the other unsecured creditors (for whom a 0% dividend is provided in the plan). The student loan repayment is not provided for in the plan nor does the Debtors provide for the treatment in the additional provisions. Like the apparent attempt to have the illusion of overpayment, the Debtors may be attempting to "hide the ball" as to the treatment of the student loan creditor from the other unsecured creditors.

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.

27. 14-29154-E-13 GARY/CHERYL PETERSEN — MOTION TO CONFIRM PLAN
BSJ-2 Brandon Johnson — 2-4-15 [43]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 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 grant the Motion to Confirm the Amended Plan.

Gary and Cheryl Petersen ("Debtors") filed the instant Motion to Confirm the Amended Plan on February 4, 2015. Dckt. 43.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 24, 2015. Dckt. 56. The Trustee objects on the ground that the Debtor's plan relies on the Motion to Value Collateral of Americredit Financial Services, Inc. on a 2010 Hyundai. If the motion is not granted, Debtor's plan does not have sufficient monies to pay the claim in full.

DISCUSSION

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

The court, at the March 10, 2015 hearing, granted Debtor's Motion to Value Collateral of Americredit Financial Services, Inc. valuing the secured claim at $22,040.96. Dckt. 61. Therefore, the Trustee's objection is overruled.

After an independent review of the plan and with no pending objections, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 15-20659-E-13 JUVENAL ZAMORANO
TOG-1 Thomas Gillis

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
2-25-15 [17]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 25, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Juvenal Zamorano ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6140 Seyferth Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $165,548.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $257,750.00. Creditor's second deed of trust secures a claim with a balance of approximately $14,150.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Juvenal Zamorano ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 6140 Seyferth Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy

plan. The value of the Property is $165,548.00 and is encumbered by senior liens securing claims in the amount of $257,750.00, which exceed the value of the Property which is subject to Creditor's lien.

29. 13-32861-E-13 JAMES/BETH FRY **CONTINUED MOTION TO CONFIRM PLAN**
PGM-2 Peter Macaluso **5-15-14 [66]**

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 15, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

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

The Chapter 13 Trustee opposes the motion on the basis that Class 4 of Debtors' plan indicates that Debtors are in a trial loan modification effective May 2014. Debtors have filed a Motion to Approve Loan Modification, but the plan does not contain any provisions for the mortgage in the event the trial modification does not become permanent. The motion does not indicate any alternative provision for the mortgage or indicate what the terms of the

permanent modification would be.

Additionally, the Trustee argues that the Debtors' plan may not be the Debtors best effort. Trustee states the Debtors are below median income. The amended plan calls for payments of a total of $7,500 through April 2014 and then $850.00 per month for the remainder of the plan. The most recently filed Schedule J, Dckt. 77, indicates combined monthly income from Schedule I of $4,660.26 per month. Expenses on Schedule J total $3,809.75, leaving net income of $850.51 per month. Item #24 indicates that "Debtor wife has new single job ...." Debtors Declaration in Support of the Motion to Confirm indicates that Debtors are employed by Sacramento City Unified School District and Hallmark Rehab Group but the Declaration does not indicate any changes to the Debtors income.

The most recently filed Schedule I, Dckt. 29, filed on December 2, 2013 indicates Beth Fry is employed by HCR Manor Care, her gross income is $4,742.05 and the net income on the Schedule is $5,627.48 (not $4,660.26 as indicated on the most recent Schedule J). The Trustee is not aware of any other amended Schedule I to date. Debtors may have more than the net income of $850.51 which may be paid into the plan for the benefit of unsecured creditors.

DEBTOR'S RESPONSE

Debtors respond, stating that additional time is needed to address the Trustee's concerns, to provide the Trustee with statements and the financial effect on the disposable income funding the plan.

TRUSTEE'S RESPONSE

On July 30, 2014, the Chapter 13 Trustee filed a supplemental declaration stating that no additional information had been provided to the Trustee. Nothing has been filed with the court as of the September 3, 2014, review for this hearing.

JULY 1, 2014 HEARING

At the July 1, 2014 hearing, based on the foregoing, the court continued the hearing to allow the Debtors to provide the Trustee with the requested documentation and for the Trustee to file additional opposition, if any.

AUGUST 5, 2014 HEARING

At the August 5, 2014 hearing, the court ordered that supplemental pleadings and proposed amendments be filed and served by August 15, 2014, and Reply pleadings, if any, on or before August 22, 2014. Civil Minutes, Dckt. No. 98.

SEPTEMBER 9, 2014 HEARING

At the September 9, 2014 hearing, the court continued the Motion to Confirm the Amended Plan to 3:00 p.m. on October 28, 2014.

Additionally, on this same hearing date, the court denied Debtors' Motion to Approve their Loan Modification, on the basis that the Motion does

not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court has noted that it cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. In their Motion filed on August 12, 2014, the Debtors fail to identify the lender who has allegedly entered into an agreement to modify their home loan, rendering the court unable to issue an order affecting the rights of a specified party. The motion was also denied on the basis that a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a). Motion to Approve Loan Modification, PGM-4.

OCTOBER 21, 2014 HEARING

At the October 21, 2014 hearing, the court heard Debtors' second Motion to Approve their Loan Modification. Dckt. 108. Once again, the court denied the motion on the basis that the Motion does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court has noted that it cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. Further, the court noted that while the Debtors did name "Green Tree" as the lender, the court still cannot discern whether Green Tree is the actual creditor. Green Tree is a servicing company and no evidence was filed to show that Green Tree is, in fact, the creditor.

NOVEMBER 5, 2014 ORDER

On November 5, 2014, the court issued an order resetting the hearing on the instant Motion to December 16, 2014 at 3:00 p.m. Dckt. 121.

DECEMBER 16, 2014 HEARING

The court continued the hearing to February 3, 2015 at 3:00 p.m. to be heard in conjunction with the Order to Appear. Dckt. 146.

FEBRUARY 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 24, 2015. The court further ordered that on or before February 17, 2015, Debtors shall provide Supplemental Schedules I and J to the Trustee.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee filed a supplemental declaration on February 18, 2015. Dckt. 165. The Trustee states that he has not received nor has the Debtor filed any Supplemental Schedules I and J by the February 17, 2015 deadline. The Trustee states that his objections remain unresolved.

DEBTORS REPLY

The Debtors, through counsel, filed a reply on February 24, 2015. Dckt. 167. The Debtors state that the reason for the multiple continuances was due to the Motion to Approve Loan Modification and the Order to Show Cause. The Debtors state that there has been no intentional delay by counsel to provide

the information. The Trustee asked for the 2013 income taxes which were provided. The Trustee then requested the last pay-stubs for 2014 and counsel supplied W-2s and the last pay stubs for both Debtors.

The Debtors' counsel believed that the Trustee was verifying income and feasibility due to the extended delay. Debtors's counsel will file amended Schedule I and J prior to the hearing.

DEBTORS' SUPPLEMENTAL REPLY

The Debtors filed a supplemental reply on March 16, 2015. Dckt. 170. The Debtors state that they have updated their income and expenses which reflect that $850.00 is feasible. The supplemental Schedules I and J were filed with this response. Dckt. 169.

DISCUSSION

The court notes that this Motion has been pending for nearly a year at this point, being continued for failure for the Debtors to provide documentation timely and the delays in getting the Motion to Approve Loan Modification granted. While Debtors' counsel attempts to say that the continued delay is not at fault of the Debtors, the Debtors failed to follow an explicit order of this court to file supplemental Schedules I and J by the February 17, 2015. Dckt. 158. Instead, the Debtors did not file the supplemental schedule until March 16, 2015, a month after the deadline. The Debtors do not provide any explanation or justification as to why they failed to comply with such a simple deadline for such critical information for the March 24, 2015 hearing.

The Debtors having only filed the Schedules a week prior to the hearing may be trying to give the Trustee less time to review the Debtors' finance to hopefully slip through the crack and get the plan approved.

A review of the late filed Supplemental Schedules I and J show that the Debtors have been able to "compute" exactly the same disposable monthly income of $850.51 as before the income and expense changes. The Debtors' Income from Schedule I remains the same at $4,660.00. The Supplemental Schedule J shows that the Debtors have reduced the following expenses:

	Schedule J (Dckt. 77)	Supplemental Schedule J (Dckt. 169)	Difference
Clothing, Laundry, and Dry Cleaning	$3.00	$143.00	+$140.00
Transportation	$490.00	$350.00	-$140.00

It appears that the savings the Debtors got from gas prices reducing have been shifted to a dramatic increase in clothing, laundry, and dry cleaning. The Debtors provide no explanation as to how the Clothing expenses have increased by 4,766%. A review of the Supplemental Schedule J shows that the Debtors did not even indicate that this is one of the changed expenses. The Debtors do provide an "A" notation next to the transportation costs and the disposable monthly income, indicating what they amended. However, no such

annotation is next to the clothing expense.

While the court has granted the Motion to Approve the Loan Modification, thus resolving the Trustee's first objection, there still remains the issue as to whether the Debtors are providing for all disposable monthly income. Particularly, there remains the issue as to whether Debtor Beth Fry is reporting her full income on the schedules.

The court does not blindly allow debtors to "fudge" their budget to get a plan is confirmed. As discussed supra, the Debtors appear willing to say or do whatever is necessary to manipulate their finances to get what they want – a plan confirmed, without regard to whether it complies with the Bankruptcy Code.

The Debtors failed to timely file additional pleadings, for this motion that has been continued since July 2014. Upon review of the supplemental Schedules and the responses by the Debtors, the court cannot determine that this Plan is the Debtors' best efforts or that it is based on Debtors' financial reality.

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.

30. 15-20361-E-13 HRISTOS ARTSITAS **OBJECTION TO CONFIRMATION OF**
DPC-1 Jeremy Heebner **PLAN BY DAVID P. CUSICK**
2-25-15 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor may not be eligible for Chapter 13 relief because Debtor has not filed tax returns in 2010 and 2013. 11 U.S.C. §§ 1308 & 1325(a)(9).

2. The Trustee is unable to determine the feasibility of the plan because it appears that the Debtor will not be able to make the

increased payment of $995.00 per month for the last 50 months of the plan. On Schedule I, Debtor explains that he expects to be receiving social security of $1,350.00 per month by the tenth month. Debtor goes on to include that out of the $1,350.00, he anticipates moving into an apartment and will pay $750.00 per month rent which would leave $600.00 to contribute to the plan. The current plan payments is $350.00. With the additional $600.00 after month 10, the Debtor will have $950.00 per month available, not the $995.00 proposed.

3. The Trustee is unable to determine feasibility of the plan since the Debtor failed to file a Business Budget detailing their business income and expenses. Debtor reports he earns $1,625.00 net business income but does not report any business expenses on Schedule J. It appears that the Debtor has failed to attach the business income and expense report showing actual gross receipts and an itemized list of all business expenses. Debtor's Statement of Current Monthly Income reports $68,262.03 in monthly income and Debtor reports business expenses of $66,429.53. Dckt. 1, pgs 44-59.

4. The Debtor cannot make the payments under the plan or comply with the plan because the secured Internal Revenue Service claim is not provided for in Debtor's plan. 11 U.S.C. § 1325(a)(6).

5. The Debtor's plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor lists interest in his business on Schedule B, listing an estimated value of $5,100 which is the value of the assets of the business but indicated the produce, which is the subject of the business and the source of the income for the business, has no value. Dckt. 1, pg 11. The Trustee objects to the suggestion that the produce has no value as the Debtor sold the produce he held on the date of filing to customers. The Debtor was unable to indicate what amount of money he made from the inventory of produce, but did indicate that he did sell his inventory held at the time of filing.

6. The Debtor has claimed exemptions under California Code of Civil Procedure § 703.140(b) and appears married based on Form 22C-1 although the spouse has not joined in the petition. California Code of Civil Procedure § 703.140(a)(2) requires the Debtor to file a Spousal Waiver, signed by both Debtor and spouse, for use of the claimed exemptions. The Debtor has not filed such waiver.

7. The Debtor has failed to provide the Trustee with business documents such as: questionnaire, tax returns, profit and loss statements, bank account statements, proof of licenses and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I).

8. The Debtor failed to provide proof of his Social Security Numbers. 11 U.S.C. § 521(h)(2).

9. The Debtor failed to provide valid photo identification to the Trustee. 11 U.S.C. § 521(h)(1) and (2).

DEBTOR'S RESPONSE

The Debtor filed a response on March 16, 2014. Dckt. 23. The Debtor responds in order of the Trustee's objections as follows:

1. Debtor is "still working on" getting his tax returns filed and should be filed before the continued Meeting of Creditors.

2. Debtor will not likely be receiving social security benefits until January 2017. However, Debtor believes that his business will increase and that the increase will allow him to make the increased plan payments. Further, if Debtor's business increases but not the full $600.00, Debtor believes he can cut some expenses to make up the difference. If necessary, Debtor states he will continue to live in the back room of his produce store.

3. Debtor has sent the Trustee his P&L. The Debtor asserts that this should show the Trustee the feasibility of Debtor's business. If the Trustee requires more information, the Debtor is willing to provide it.

4. The Internal Revenue Service is listed in the plan as Class 5 priority for a total amount of $44,000.00. Debtor is prepared to pay most of the Internal Revenue Service's claim, but Debtor was not aware that part of it is secured. So, assuming Debtor's liability to the Internal Revenue Service does not change when he files his returns, Debtor is willing to amend the Plan to remove part of the Internal Revenue Service's priority claim and to list it as secured instead. If necessary, Debtor can use some of his social security income later on in the plan to pay the small amount that was not accounted for in the plan (approximately $1,501.51).

5. Debtor had trouble valuing the produce because his produce goes bad in several days. In any sort of liquidations, the produce would likely be valueless. Even if Debtor could have sold all of his produce, he would have made approximately $6,000.00. However, there is waste and Debtor rarely sells his entire inventory. Further, even assuming Debtor could have sold his entire inventory, how could exempt it all. Debtor asserts there is no liquidation analysis issues.

6. Debtor should have a spousal waiver on file before the continued Meeting of Creditors.

7. Debtor should have the business documents to the Trustee before the continued Meeting of Creditors.

8. Debtor will provide proof of his social security number to the Trustee at the continued Meeting of Creditors.

9. Debtor will provide proof of his identity to the Trustee at the continued Meeting of Creditors.

The Debtor requests that the Motion be continued until after the continued Meeting of Creditors to address all of the remaining Trustee concerns. The continued Meeting of Creditors is set for hearing at 10:30 a.m. on April 16, 2015.

DISCUSSION

The Trustee's objections are well-taken. Based on the numerous objections made by the Trustee, there appears to be many issues unresolved, mainly for the Debtor's failure to provide required documentation to the Trustee as required by the Bankruptcy Code. The Debtor has not yet provided any business documentation, identification, or his tax returns. This information is necessary for the Trustee and the court to determine the Debtor's financial reality and whether the terms of the proposed plan are feasible. Without such information, the court only has the Debtor's word to rely on which, for confirmation purposes, is not sufficient, especially when such a step-up in plan payments is proposed.

While the Debtor requests a continuance until after the continued Meeting of Creditors, many issues remain including the treatment of the Internal Revenue Service claim. The Internal Revenue Service filed Proof of Claim No. 2 on March 13, 2015. The total claim amount is $94,878.75, with $15,135.33 unsecured, $16,545.42 unsecured, and $63,178.00 entitled to priority. The Debtor's proposed plan only provides for $44,000.00 of the priority claim. The proposed plan fails to address the full amount of the priority claim nor does it address the unsecured and secured portion. This raises serious concerns over the feasibility of the plan when it does not provide for the payment of the Internal Revenue Service's full claim.

Additionally, the Debtor's "expected" increase in business income does not sufficiently explain how the Debtor will be able to afford the plan step up. It is worth noting that the Debtor does not address the Trustee's point that even with the proposed $600.00 increase, there still may be a shortcoming of $45.00 to cover the $955.00 step-up plan payments. While the Debtor states that, if need be, he will continue to live in the back room of the produce store, the court will not make on determination as to the appropriateness of such living situations nor whether it is permitted. Either way, this all remains to be speculative and does not persuade the court that such step-up may be feasible when it is based on conjecture.

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

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

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

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

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

31. 14-23363-E-13 LINDA WHITE — MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso — 2-10-15 [22]

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 February 10, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

Linda White ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 10, 2015. Dckt. 22.

TRUSTEE'S OBJECTION

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

Motion on February 26, 2015. Dckt. 28. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the Debtor's ability to pay. The Debtor is delinquent $3,520.00 under the terms of the plan confirmed on June 10, 2014. The confirmed plan calls for payments of $880.00 per month. The Debtor has paid a total of $5,280.00 with the last payment of $580.00 posted November 18, 2014. The declaration filed by the Debtor does not address what the delinquent payments were spent on or why the payments were not made. Additionally, the Trustee notes the supplemental Schedule J filed February 10, 2015 reflects transportation costs of $425.00 monthly and vehicle expense of $98.00 monthly although the Debtor states her vehicle has been totaled. The declaration does not state if the Debtor has had any legal expenses or continues to have legal expenses associated with the accident.

2. The proposed plan does not authorize $408.29 in interest paid to Class 2 creditor Chase Auto Finance.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's objection on March 16, 2015. Dckt. 33. The Debtor responds as follows:

1. The Debtor filed a supplemental declaration that explains that the Debtor needed the payments in order to obtain a rental car after her insurance coverage ended. Debtor was not able to obtain financing that this court would approve. Debtor further explains that she must utilize various means of transportation given her pending Department of Motor Vehicle suspension.

2. Debtor requests that the interest authorization payment for the Class 2 Claim of Chase Auto Finance be remedied in the order confirming.

DISCUSSION

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

The Trustee's objections are well-taken. While the concern over the authorization to pay the Class 2 creditor could be addressed in the order confirming, the issue over whether the Debtor can afford the plan payments is concerning. The Debtor's supplemental declaration states in generalities the need to rent a car due to the accident of her vehicle and that she had to put an additional deposit down due to her lack of credit card. However, the Debtor does not provide any receipts, bills, or any form of evidence to support the use of the plan payments to rent a car. Additionally, the Debtor does not explain if her son is also using the rented vehicle and, if so, is he contributing. Nor does the Debtor explain why she is not using public transportation or other less expensive means of transportation. While the Debtor has disclosed that she has spent $750.00 in legal fees associated with her accident, there is still information omitted that is necessary for the Trustee and the court to determine the viability and feasibility of the plan.

Without this information, the court cannot determine the financial reality of the Debtor.

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

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

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

32. 14-31363-E-13 AARON/MARIA MAREADY — MOTION TO CONFIRM PLAN
GDC-3 Guy Chism — 1-28-15 [39]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2015. By the court's calculation, 56 days' notice was provided. 42 days' notice is required.

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

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

On March 13, 2015, the Aaron and Maria Maready ("Debtor") filed a Motion to Confirm an Amended Plan, attaching a new proposed amended plan. Dckt. 62 & 64. The court construes the pending Motion to Confirm and new proposed amended plan as a de facto withdrawal and the "Withdrawal" is consistent with the opposition filed to the Motion. Therefore, the court interprets 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.
>
> 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 dismissed without prejudice..

33. 14-31363-E-13 AARON/MARIA MAREADY — MOTION TO VALUE COLLATERAL OF WELLS FARGO HOME MORTGAGE
GDC-4 Guy Chism — 2-12-15 [46]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The court shall set a discovery schedule and final hearing date for the Motion to Value secured claim of Wells Fargo Home Mortgage ("Creditor").

The Motion to Value filed by Aaron R. Maready and Maria Elena Maready ("Debtors") to value the secured claim of Wells Fargo Home Mortgage ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2704 Loggerhead Way, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $427,000.00 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).

Debtor offers the Declaration of Carolyn Caples, a licensed real estate appraiser with 9 years' experience, who opines that the value of the property

is $427,000.00.

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

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

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

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

OPPOSITION

Creditor has filed an opposition. Creditor contends that they are the holder of both a first and second priority Deed of Trust encumbering the Property. The first note was recorded February 10, 2006 in the original principal amount of $392,500.00. The second note was also recorded on February 10, 2006 with an original credit limit of $50,000.00.

Creditor opposes the Debtors' attempt to reduce their claim in connection with the first priority lien. Creditor argues that as any attempt to reduce or modify the total amount owing on his loan would impermissibly seek to modify their claim in violation of 11 U.S.C. § 1123(b)(5).

Creditor further argues that the fair market value of the Property is greater than $427,000.00 and that their second priority lien is fully secured. Therefore, Creditor requests time to obtain its own valuation evidence prior to this Court making a determination.

RESPONSE TO OPPOSITION

Debtor's have filed a reply to opposition. Debtors contend that Creditor's argument that they are attempting to devalue or modify the first priority lien is unfounded. Debtors state that in their motion there is nothing that alludes to them attempting to reduce the value of the first priority lien. FN.1.

FN.1 Debtors are correct, the Motion clearly requests to value the second deed of trust secured claim. The court does not see language in the Motion which would cause a party or attorney to believe that the Motion also sought to value the claim secured by the first deed of trust. Possibly that contention by Wells Fargo Bank, N.A. was a simple misreading. Or, it may be that Wells Fargo Bank, N.A. has a "one size fits all" opposition that it tells its attorney to routinely file.

Debtors further argue that Creditor's request to have this Court wait to rule on the motion is not permitted. Debtors state that no where in the Eastern District's Local Rules does it allow a creditor to object to motion in Chapter 13 cases because the creditor is unprepared. The Creditors have had 25 days to review and obtain balances on all accounts and to make a reasonable inquiry into the value of the Debtors' real property. The Debtors contend that they both know the value of their home to a reasonable certainty. Furthermore, they had a Certified Market Value done on their home by a licensed real estate agent.

DISCUSSION

The Creditor's argument as to the Debtors attempting to modify the terms of the first priority lien seems to be unfounded as the Debtors are attempting to value the second in priority lien. Merely because the Creditor holds both the first and second in priority liens, Creditor seems to be convoluting the two and making an argument that by modifying the second, it is, in effect, modifying the first priority lien. This is not correct.

However, the Creditor has requested additional time to have their own appraiser value the Property. The discovery provisions of the Code of Civil Procedure are incorporated into the law and motion practice in bankruptcy court. Fed. R. Bankr. P. 9014. It is reasonable for a party to request time to do discovery, especially in light of the short notice period in the fast pace bankruptcy law and motion practice for substantive matters. It is unreasonable for Debtors to believe that the Local Bankruptcy Rules setting the procedure for scheduling hearing on motions to overrule the Federal Rules of Bankruptcy Procedure. FN.2.

FN.2. In addition to misconstruing the proper application of local rules, the Motion also asks for a mandatory injunction against Wells Fargo Bank, N.A. If Debtors believe that they have proper grounds for obtaining such an injunction, they may file the required adversary proceeding to seek such relief. Fed. R. Bankr. P. 7001.

All Discovery, including the hearing of discovery motions, shall be completed on or before ----------, 2015.

Creditor shall file and serve supplemental opposition pleadings on or before ----------, 2015.

Movant shall file and serve supplemental reply pleadings on or before ---------, 2015.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Aaron R. Maready and Maria Elena Maready ("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 hearing on the Motion is continued to 3:00 p.m. on ----------, 2015. The Creditor shall file and serve any supplemental pleadings on or before ----------, 2015. Any replies or objections shall be filed and served on or before ----------, 2015.

34. 13-29064-E-13 TERRY/REBECA BRISTER — MOTION TO MODIFY PLAN
MET-4 Mary Ellen Terranella — 2-12-15 [53]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2105. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan

complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 12, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 14-30265-E-13 FRANK/MARINA YAVROM
DPC-1 Timothy Walsh

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

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

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

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

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

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

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

The court's decision is to sustain the Objection.

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

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

JANUARY 13, 2015 HEARING

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

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to March 24, 2015 at 3:00 p.m. Dckt. 48.

TRUSTEE'S SUPPLEMENTAL PLEADINGS

The Trustee filed a supplemental pleading on March 16, 2015. Dckt. 51. The Trustee states the following:

1. The Debtor is over the median income and proposes plan payments of $200.00 for 60 months, with 5% dividend to unsecured creditors, which totals $9,258.00. The Trustee received a Notice of Mortgage Payment Change from JPMorgan Chase Bank, N.A. filed on March 13, 2015, the payment changed from $622.57 to $0.00. The Debtor lists this mortgage payment in Class 4 at $644.00 and also on Schedule J as an expense.

2. The Trustee is uncertain of the state of the real property commonly known as 4812 White Jade St., Las Vegas, Nevada. It appears that the Debtor has listed many unsecured debts on Schedule F as "Mtg on foreclosed property: but has failed to list the address of the real property. The Debtor lists HOA on White Jade on Schedule F. The Trustee is not certain if the Debtor has additional funds to pay into the plan, if the mortgage payment of $644.00 on White Jade Street is not being paid.

DISCUSSION

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

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

Furthermore, the unknown treatment of the real property and whether the Debtor now has more disposable income reinforces the fact the proposed plan is

not the best efforts of the Debtor as their may be more funds that could be applied.

Therefore, because the Motion to Value has been denied, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

36. 14-30265-E-13 HDP-1 **FRANK/MARINA YAVROM**
Timothy Walsh

CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY HOME EXPO FINANCIAL INC.
1-23-15 [39]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

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

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

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

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

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to March 24, 2015 at 3:00 p.m. Dckt. 49.

No supplemental pleadings have been filed in connection with this Objection.

DISCUSSION

The Creditor's objections are well-taken.

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

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

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

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

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

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

37. 14-30265-E-13 FRANK/MARINA YAVROM
TJW-1 Timothy Walsh

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

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

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

Below is the court's tentative ruling.

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

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

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

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

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

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

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

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

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

OPPOSITION

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

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

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

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

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

JANUARY 13, 2015 HEARING

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

MARCH 3, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 24, 2015. Dckt. 49.

No supplemental pleadings in connection to the instant Motion has been filed.

DISCUSSION

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

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

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

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

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

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

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

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

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

Declaration, Dckt. 27.

This declaration is problematic on several grounds. First, counsel and Home Expo have chosen to make their attorney a witness in this bankruptcy case as to material factual matters concerning the Home Expo claim in this case. This not only impugns his credibility as an advocate, it may open the door to a waiver of the attorney-client privilege on these matters. More significantly, the declaration demonstrates that Mr. Paloci cannot meet the

minimum requirements for providing credible testimony – personal knowledge. F.R.E. 601. Finally, the court finds it difficult to believe that Home Expo does not have, and has not provided its attorney, with the amount of the senior lien for this debt they purchased.

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

The Debtor has had multiple opportunities to properly file and amend the instant Motion to ensure that the proper creditor is listed. The court will no longer continue the Motion, especially in light of the fact that the Debtor has failed to file any supplemental pleadings, declarations, or motions to address the court and creditors concerns.

Therefore, the Motion is denied without prejudice.

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

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

38. 15-20065-E-13 GARY SHIMOTSU **OBJECTION TO DEBTOR'S CLAIM OF**
DPC-2 Matthew Eason **EXEMPTIONS**
2-11-15 [19]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemptions are disallowed without prejudice in their entirety.

The Trustee objects to the Debtor's use of the California Code of Civil Procedure § 704.730 for the equity in the real property commonly known as 9893 Nestling Circle, Elk Grove, California (the "Property"). Dckt. 19. The Debtor attempts to exempt $75,000.00 in equity in the Property under California Code of Civil Procedure § 704.730. However, the Trustee argues that the Debtor does not own the Property. Schedule A indicates that the Property is held in the name of Gary Shimotsu Revocable Living Trust. Dckt. 1.

The Trustee's objection is well-taken. A review of the Debtor's Schedule A shows that the Property is "held in the name of Gary Shimotsu Revocable Living Trust." Dckt. 1, pg. 9. While the Debtor still lists as having an interest in "fee simple," the Debtor states under penalty of perjury that the Trust holds the Property, not the Debtor. As such, the Debtor has no right under California Code of Civil Procedure § 704.730 to claim such exemption.

The Debtor has not filed any response to the Trustee's objection.

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, without prejudice, in their entirety.

39. 14-29067-E-13 EARLINE MILES
DPC-1 Mary Ellen Terranella
OBJECTION TO DISCHARGE BY DAVID P. CUSICK
2-18-15 [58]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 18, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Objection to Discharge 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 Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Debtors Discharge under 11 U.S.C. § 1328(f) on February 18, 2015. Dckt. 58. The Trustee argues that Rarline Miles ("Debtor") is not entitled to a discharge in the instant case.

Debtor filed a Chapter 7 bankruptcy case on March 26, 2014. Case No. 14-23072. The Debtor received a discharge in that case on July 29, 2014, pursuant to 11 U.S.C. § 727.

On September 9, 2014, the Debtor filed the instant Chapter 13 case.

The Trustee argues that pursuant to 11 U.S.C. § 1328(f)(1), Debtor is not eligible to receive a discharge in the instant case.

11 U.S.C. § 1328(f)(1) provides:

> (f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge –
>
> > (1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter. . . .

A review of the Debtor's prior Chapter 7 case shows that on July 29, 2014, the Debtor received a discharge pursuant to 11 U.S.C. § 727. Case No. 14-23073, Dckt. 19. The order for relief (11 U.S.C. § 301(b)) in the voluntary Chapter 7 case was the filing date, March 26, 2014. The date of the filing of the Chapter 7 case is less than 4-years preceding the date of the order for relief under Chapter 13.

Therefore, the objection is sustained and the Debtor is denied discharge pursuant to 11 U.S.C. § 1328(f)(1).

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 Discharge filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and the Debtor is denied discharge pursuant to 11 U.S.C. § 1328(f)(1).

40. 14-29670-E-13 CHERRONE PETERSON **MOTION TO CONFIRM PLAN**
PGM-2 Peter Macaluso **2-4-15 [72]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. By the court's calculation, 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

Cherrone Peterson ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 4, 2015. Dckt. 72.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 24, 2015. Dckt. 89. The Trustee objects on the following grounds:

1. Debtor may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6).

   a. Debtors most recent Schedule I (Dckt. 27) indicates net business income on line 8a of $1,200.00. Profit and Loss Statements submitted to the Trustee on February 6, 2015 indicating that the Debtor earns only $500.00 per month.

   b. Schedule I indicates Debtor's non-filing spouse has gross income of $7,854.17 per month. Payroll deduction on line 6 total $1,636.69. A review of the spouse's most recent pay stubs submitted to the Trustee indicates that the Debtor's spouse has a 401k deduction of $392.77 per month which is not disclosed on Schedule I. Schedule I does not accurately reflect the Debtor's income.

2. Further review of the pay stubs reveals that Debtor's spouse is not withholding federal taxes from his pay. According to the

most recent pay advice for the period ending September 27, 2014, the year to date federal tax withheld is $25.87. A review of Internal Revenue Service's Proof of Claim No. 5-1 indicates that of the $16,210.30 in priority tax debt, $12,179.02 of that amount is listed under a taxpayer ID number not matching the Debtor. The last four digits of the ID number correspond to the non-filing spouse's social security number as listed on the 2013 federal tax return. The Trustee is concerned that the Debtor will have future tax debt going forward, and may not be able to pay the tax obligations based on the discrepancies in Debtor's income. Debtor's most recent Schedule J (Dckt. 78) does not contain a line item for payment of future tax obligations.

OCWEN LOAN SERVICING, LLC'S OBJECTION

Ocwen Loan Servicing, LLC ("Creditor") filed an objection to the instant Motion on March 10, 2015. Dckt. 96. The Creditor objects on the following grounds:

1. The Debtor's debts exceed the eligibility requirements of 11 U.S.C. § 109(e). The Creditor asserts that the Debtor intentionally excluded from her schedules the liquidated noncontingent debt of approximately $1.2 million owed to Melbye Trust as of the petition date which the Debtor believes she owes, as well as other unsecured debts. The Melbye Trust debt alone renders the Debtor ineligible for Chapter 13 relief.

2. The property commonly known as 9345 Rocky Lane, Orangevale, California (the "Property") is not property of the estate. Title to the Property was taken in the name of Cedric Peterson as "a married man as his sole and separate property" per the recorded Grant Deed and, at the same time, the Debtor relinquished "all right, title and interest. . . community or otherwise" in the Property to Cedric Peterson pursuant to the recorded Interspousal Deed. The Creditor argues that Debtor has no community property interest in the Property.

3. The plan proposes to modify a loan with a non-debtor. Even though the Creditor argues that the estate has no interest in the Property, the Creditor argues, arguendo, that the plan attempts to modify the Note whose borrower is Cedric Peterson. The Debtor does not hold an ownership interest in the Property, is not a party to the Note, and cannot modify the Note through the Plan.

4. The plan misstates the arrears on the Note. Assuming arguendo that the Debtor could modify the Note, the Debtor misstates the arrears due. The Creditor asserts that as of the petition date the Debtor owed $778,722.44.

DEBTOR'S REPLY

The Debtor filed a reply to the objections on March 17, 2015. Dckt. 103. The Debtor responds as follows:

1. Debtor’s non-filing spouse is having his withholding reviewed by an accountant, based on the concerns raised by the Trustee so that an educated deduction can be determined for future expenses.

2. Debtor acknowledges the amount of the mortgage arrears are incorrect.

The Debtor requests that the Objection be sustained.

DISCUSSION

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

The Trustee and the Creditor’s objections are well-taken. The Debtor in her reply concedes that there are issues arising from the non-filing spouses deductions so the Trustee’s objections are sustained.

As to the Creditor’s objections, the Debtor concedes to the inaccuracy of the arrearages listed in the plan and thus Creditor’s objection as to the improper arrearages amount is sustained.

As to the Creditor’s remaining objections, they do not appear to be objections as to the proposed plan but rather arguments as to whether the Chapter 13 should be dismissed. If the Creditor believes that the Property is not part of the estate or that the Debtor is failing to disclose an alleged creditor, the Creditor may bring a motion to dismiss. However, for purposes of the proposed plan, the Creditor is merely stating grievances rather than actual violations under the proposed plan.

However, since the plan fails to provide for the full arrears of the Creditor and the deductions of the non-filing spouse are not accurate to determine what the disposable income of the Debtor is for purposes of plan payments, the objections are sustained.

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

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

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

41. 12-31671-E-13 CHRISTIAN NEWMAN
PGM-7 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
2-24-15 [240]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 24, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Peter G. Macaluso, the Attorney ("Applicant") for Christian L. Newman Debtor in Possession ("Client"), makes a first and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period January 22, 2014 through January 29, 2015. Applicant requests additional fees in the amount of $2,500.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on February 26, 2015.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including confirming the Chapter 13 plan. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

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

> fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $3,000.00 in attorneys fees, not the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dckt. 228. Applicant prepared the order confirming the Plan.

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

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

FEES AND COSTS & EXPENSES REQUESTED

Fees Substantial and Unanticipated

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

General Case Administration: Applicant spent 6.05 hours in this

category. Applicant assisted Client with reviewing client documents, meeting with the client, and reviewing incoming motions.

Adversary Proceedings: Applicant spent 5.3 hours in this category. Applicant appearing at hearings for motion to dismiss, motions to confirm, and client deposition.

Significant Motions and Other Contested Matters: Applicant spent 3.45 hours in this category. Applicant drafted and filed motion to dismiss, client declarations, responses to opposition to motion to confirm, and motion to confirm.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso	14.8	$200.00	$2,960.00
Total Fees For Period of Application			$2,960.00

However, the Applicant is asking only for compensation for 12.5 hours for a total of $2,500.00 for actual, reasonable, necessary, and unanticipated services.

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated and in the best interest of the Debtor, estate, and Creditors.

However, it does not appear that such work was "unanticipated" at the time Applicant sought and obtained an order allowing him a set fee of $4,000.00 for getting the plan confirmed and providing normal post-confirmation services in the Debtor's performance of the Plan and entering of the discharge. Order Confirming Plan filed January 30, 2015. Dckt. 228. In the confirmation order prepared by Applicant, he inserted the Local Bankruptcy Rule 2016-1(c) paragraph by which he elected to accept the $4,000.00 set fee and not file fee applications.

What Applicant argues is that the $4,000.00 he had approved by the court under Local Bankruptcy Rule 2016-1(c) is not sufficient for the pre-confirmation work done by Applicant. It was not "unanticipated" that Applicant had spent more time and effort in getting the plan to confirmation. For the court to accept Applicant's interpretation of "unanticipated," Local Bankruptcy Rule 2016-1(c) would be rendered a useless shell, by which debtor attorneys would merely treat it as a guaranteed minimum payment, which they can routinely

exceed. FN.1.

FN.1. Local Bankruptcy Rule 2016-1(c)(3) states that "The fee permitted under this Subpart, however, is nota retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, ..."

If Applicant believes that the granting of $4,000.00 in attorneys' fees pursuant to Local Bankruptcy Rule 2016-1(c) was in error, then he may file a motion to vacate only that portion of the confirmation order. The motion to vacate can be heard at the same time as a motion for allowance of and fees and costs in this case, as well as a reasonable projected seat fee amount for "normal" post-confirmation services in documenting the completion of the plan and Debtor obtaining a discharge) pursuant to Local Bankruptcy Rule 2016-1(b).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed Peter G. Macaluso ("Applicant"), Attorney for the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter G. Macaluso is denied without prejudice.

42. 14-29671-E-13 DANNY RUE
DWR-2

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on December 12, 2015. By the court's calculation, 60 days' notice was provided. 28 days' notice is required.

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

The Motion to Value is dismissed without prejudice.

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

FEBRUARY 10, 2015 HEARING

The court continued the hearing to 3:00 p.m. on March 24, 2015 to allow the Debtor to serve the Trustee of the Anana Bliss Revocable Living Trustee.

DISCUSSION

On February 19, 2015, the Debtor filed a new Motion to Value Collateral of Anana Bliss Revocable Trust, which properly served the Trustee. The court construes the pending Motion to Value Collateral as a de facto withdrawal.

Therefore, the court interprets the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Value, 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.
>
> The Motion to Value 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 Value is dismissed without prejudice.

43. 14-29671-E-13 DANNY RUE
DWR-4 Pro Se

MOTION TO VALUE COLLATERAL OF ANANA BLISS REVOCABLE LIVING TRUST
2-19-15 [90]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on February 19, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Anana Bliss Revocable Living Trust ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Danny Rue ("Debtor") to value the secured claim of Anana Bliss Revocable Living Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4831 Cibola Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $75,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $172,843.00. Creditor's second deed of trust secures a claim with a balance of approximately $35,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Danny Rue ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Anana Bliss Revocable Living Trust secured by a second in priority deed of trust recorded against the real property commonly known as 4831 Cibola Way, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $75,000.00 and is encumbered by senior liens securing claims in the amount of $172,843.00, which exceed the value of the Property which is subject to Creditor's lien.

44. 14-29671-E-13 DANNY RUE **CONTINUED MOTION TO CONFIRM PLAN**
DWR-3 Pro Se **12-15-14 [51]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

The court's decision is to dismiss without prejudice the Motion to Confirm the Amended Plan.

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

TRUSTEE'S OBJECTION

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

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

2. Plan relies on pending motion. Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value Collateral of Anana Bliss Revocable Living Trust which is set for hearing on February 10, 2015. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full and therefore should be denied confirmation.

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

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

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

FEBRUARY 10, 2015 HEARING

The hearing was continued to 3:00 p.m. on March 24, 2015 to be heard in conjunction with the Motion to Value.

DISCUSSION

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

On February 26, 2015, the Debtor filed a Motion to Confirm an Amended Plan, attaching a new proposed amended plan. The court construes the pending Motion to Confirm and new proposed amended plan as a *de facto* withdrawal and the "Withdrawal" is consistent with the opposition filed to the Motion. Therefore, the court interprets 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.
>
> 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 dismissed without prejudice.

45. 14-26573-E-13 PA LEE **MOTION TO CONFIRM PLAN**
MAC-2 Marc Caraska **2-4-15 [63]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 4, 2015. 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). 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 February 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

46. 10-46774-E-13 MAURY/ELIZABETH TOVEY — MOTION TO MODIFY PLAN
PLC-4 Peter Cianchetta — 2-9-15 [65]

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 9, 2015. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

Maury and Elizabeth Tovey ("Debtors") filed the instant Motion to Confirm the Modified Plan on February 9, 2015. Dckt. 65.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 26, 2015. Dckt. 70. The Trustee states that the Debtors' plan does not specify a plan payment for January 25, 2015. Additionally, the plan is misleading as it proposes a 1% dividend to general unsecured creditors. Only general unsecured creditors remain to be paid through the plan. The Trustee has disbursed approximately 33% to unsecured general creditors to date.

DISCUSSION

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

The Trustee's objection is well-taken. A review of the proposed plan shows that the Debtors have not provided for the monthly plan payment for January. Additionally, the proposed plan does not accurately reflect that dividend percentage that Class 7 claimants would receive. While the percentage is a floor, it does not accurately reflect what the minimum would be, especially in light that those are the only remaining claims. It raises concerns on the feasibility and viability of the plan.

The Debtors have not provided any responses to the Trustee's objection to explain the deficiencies in the plan.

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

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

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

47. 10-49275-E-13 SAMUEL/ETHEL SMITH — MOTION TO MODIFY PLAN
PGM-1 Peter Macaluso — 2-10-15 [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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. 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 continue the Motion to Confirm the Modified Plan to 3:00 p.m. on April 28, 2015.

Samuel and Ethel Smith ("Debtors") filed the instant Motion to Confirm the Modified Plan on February 10, 2015. Dckt. 64.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 26, 2015. Dckt. 71. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the Debtors' ability to pay. The Debtors are currently delinquent $20,960.00 under the terms of the plan confirmed March 8, 2011. Payments under the confirmed plan are $3,275.00. The Debtors are proposing to increase the plan payment to $4,515.00 in the modified plan. The Debtors' declaration does not address how or when the delinquent

payments of $25,475.00 were spent. The last payment received from the Debtors was $4,515.00 posted February 25, 2015.

2. The Proof of Service states that "EXHIBITS IN SUPPORT OF MOTION TO MODIFY PLAN AFTER CONFIRMATION" were served. The court docket did not include the updated Schedule I and supplemental Schedule J. Only the exhibit cover sheet was filed. The Debtors then filed but did not serve the supplemental Schedule I and J on February 12, 2015. Dckt. 70.

3. Section B 2.06 reports attorney was paid $1,000.00 and that Debtor's attorney will seek court approval. Debtor's original attorney of record was paid $1,000.00 prior to the filing of the case. An additional $2,400.00 was paid through the plan pursuant to Local Bankr. R. 2016-1(c). The current attorney fee arrangements should be included in Additional Provisions.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objections on March 17, 2015. Dckt. 74. The Debtors request a continuance to allow them time to reply to the Trustee's objections namely to: (1) allow for a more detailed explanation to supplement the declaration; (2) allow for proper notice; and (3) clarification in the order the attorney fees received prior to filing of the case.

DISCUSSION

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

The Trustee's objections are well-taken. While the Debtors request a continuance, the Debtors were served the Trustee's objections nearly three weeks prior to this request. The objections of the Trustee all go to whether the plan is feasible and whether the plan provides for creditors in light of the Debtors financial reality.

The Debtors' "picked this fight" by filing the motion to confirm. Most of the objections raised by the Trustee should have been preemptively addressed in the motion and evidence filed in support of the motion.

However, the court will continue the hearing to April 28, 2015 at 3:00 p.m. to allow the Debtors the opportunity to file supplemental declarations. The Debtors shall file and supplemental pleadings on or before April 14, 2015. The court notes, however, that Debtors and Debtors' counsel should be more thorough in providing evidence in support of their motions, as the court may not find additional continuance requests justified.

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 continued to 3:00 p.m. on April 28, 2015.

IT IS FURTHER ORDERED that the Debtors shall file and supplemental pleadings on or before April 14, 2015.

48. 11-44677-E-13 DEF-8 RONALD/MELBA BRINGAS David Foyil CONTINUED MOTION TO INCUR DEBT 2-12-15 [72]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

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

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

TRUSTEE'S RESPONSE

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

MARCH 3, 2015 HEARING

The court continued the hearing to 3:00 p.m. on March 24, 2015 to allow the Debtor to become current.

No supplemental pleadings have been filed to show that the Debtor is now current.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

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

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge – 16.62%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is

to purchase a brand new car and attempt to borrow money at a 16.62% interest rate.

Given the Debtors' failure to provide testimony as to the efforts to find a vehicle with a lower interest rate or why a less expensive used car is not satisfactory, the Motion is denied without prejudice

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

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

49. 14-30077-E-13 KENNETH/SHARON MELIKIAN — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Eric Schwab — 11-24-14 [21]

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

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

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

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

The court's decision is to sustain the Objection to Confirmation.

Trustee opposes confirmation of the Plan on the basis that the Plan relies on Motion to Value Collateral. Debtors cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of Green Tree Servicing.

JANUARY 13, 2015 HEARING

At the hearing, the court continued the Objection to 3:00 p.m. on March 24, 2015. Dckt. 32.

DISCUSSION

On March 12, 2015, the Debtor filed a Motion to Confirm the Amended Plan which is set for hearing on April 14, 2015. Because the Debtor's have filed an amended plan and the court construes this as a de facto withdrawal of the originally filed plan, the Trustee's objection is sustained as to the plan filed on October 23, 2014 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 filed on October 23, 2014 is not confirmed.

50. 15-20077-E-13 CARL/CAROLYN FORE
AMC-1 Timothy Walsh

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CENTRAL MORTGAGE COMPANY
2-11-15 [25]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 11, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to dismiss without prejudice the Objection.

Central Mortgage Company dba Central Mortgage Loan Servicing Company ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not account for all of the pre-petition arrearages owed to Creditor as set forth in Creditor's Proof of Claim No. 7. 11 U.S.C. § 1322(a)(5).

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to the Creditor's objection on February 26, 2015. Dckt.33. The Trustee objects on the ground that the Trustee was not properly served. The Creditor's Proof of Service states that the Trustee is "TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)." However, the court Clerk's Notice of Electronic Filing does not constitute service in the Eastern District pursuant to Local Bankr. R. 7005-1(d)(1). The Local Bankr. R. 7005-1(d)(1) requires transmitting an email which includes the document as a PDF attachment, with specific language in the subject line of the email.

As to the merits of the objection, the Trustee agrees that based on the outstanding claim by the Creditor, the court should deny confirmation based on the asserted arrears of $22,740.76. The Debtor acknowledges the mortgage payment at $2,600.00 in the plan but asserts only $10,000.00 due. Dckt. 5, pg. 2, § 2.08.

MARCH 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on March 24, 2015 to allow Creditor to file a proof of service on Debtors and Debtors' counsel. Dckt. 38.

DISCUSSION

The Creditor having filed a “Withdrawal of Motion” for the pending Objection, the "Withdrawal" being consistent with the opposition filed to the Objection, 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 Objection, and good cause appearing, **the court dismisses without prejudice the Objection.**

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

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

51. 14-28078-E-13 GUADALUPE GONZALEZ — MOTION TO CONFIRM PLAN
JME-2 Julius Engle — 2-9-15 [38]

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

The Debtor having filed a Withdrawal of the Motion to Confirm on February 27, 2015 (Dckt. 48), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Confirm was dismissed without prejudice, and the matter is removed from the calendar.**

52. 14-30278-E-13 WW-3 | GARY SHREVES AND KAREN BAYSINGER- SHREVES Mark Wolff | MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES 3-10-15 [55]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Portfolio Recovery Associates ("Creditor") against property of Gary Shreves and Karen Baysinger-Shreves ("Debtors") commonly known as 6642 Badger Court, Sacramento, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,400.94. An abstract of judgment was recorded with Sacramento County on March 20, 2014, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an

approximate value of $180,000.00 as of the date of the petition. The unavoidable consensual liens total $241,949.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.150(b)(1) in the amount of $500.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Portfolio Recovery Associates, California Superior Court for Sacramento County Case No. 34-2013-00151439, recorded on March 20, 2014, Book 20140320 and Page 1088 with the Sacramento County Recorder, against the real property commonly known as 6642 Badger Court, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

53. 14-30278-E-13 WW-4 | **GARY SHREVES AND KAREN BAYSINGER- SHREVES** Mark Wolff | **MOTION TO AVOID LIEN OF CACH, LLC** 3-10-15 [52]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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 Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Cach, LLC ("Creditor") against property of Gary Shreves and Karen Baysinger-Shreves ("Debtors") commonly known as 6642 Badger Court, Sacramento, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,483.89. An abstract of judgment was recorded with **Sacramento** County on January 30, 2013 which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $180,000.00 as of the date of the petition. The unavoidable consensual liens total $241,949.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.150(b)(1) in the amount of $500.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Cach, LLC, California Superior Court for Sacramento County Case No. 34-2011-00107934, recorded on January 30, 2013 Book 20130130 and Page 0905 with the Sacramento County Recorder, against the real property commonly known as 6642 Badger Court, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

54. 14-31478-E-13 JOHN CHAVEZ **MOTION TO CONFIRM PLAN**
MC-3 Muoi Chea **1-30-15 [42]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 30, 2015. 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 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order

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

55. 13-35781-E-13 LORI ALVARADO
WW-4 Mark Wolff

MOTION TO MODIFY PLAN
2-12-15 [49]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

Lori Alvarado ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 12, 2015. Dckt. 49.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 55. The Trustee states that the Debtor is delinquent under the proposed plan by $265.00. The additional provisions of the modified plan states: "49.31 per month for 13 months (all missed payments through and including January 25, 2015 are hereby excused), $265.00 per month for 47 months (Beginning February 25, 2015)." Payments in the amount of $906.03 have become due and the Debtor has only paid the Trustee $641.03.

DISCUSSION

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

The Trustee's objection is well-taken. The Debtor appears to continue to be delinquent. The Debtor has not provided any evidence as to the curing of the delinquency. Delinquency in plan payments is grounds to deny confirmation as it is evidence that the Debtor cannot preform under the terms of the proposed plan, as required by 11 U.S.C. § 1322.

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.

56. 14-23685-E-13 PAUL LUDOVINA **MOTION TO CONFIRM PLAN**
LBG-6 Lucas Garcia **1-30-15 [86]**

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 30, 2015. 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). 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.

Paul Ludovina ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 30, 2015. Dckt. 85.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 91. The Trustee objects on the following grounds:

1. The Trustee is unable to determine the feasibility of the plan. Debtor lists Advance Restaurant Financial in Class 4 of the plan, but fails to indicate the amount of the monthly contract installment. The creditor was previously listed in Class 2 of the Debtor's plan.

2. The Trustee is concerned that payment of Advance Restaurant in Class 4 may cause the Debtor to be unfairly discriminating against other general unsecured creditors. On May 8, 2014, Advance Restaurant Finance, LLC filed Proof of Claim No. 3, which appears to indicate that the claim is wholly unsecured. While the Debtor claims to be paying the claim outside the plan, the Debtor offers no evidence of the payments and what percentage of the claim will be paid to the creditor. The Trustee has reviewed the claim file by creditor which appears to indicate that they do possess a secured claim but have not attached proof of a perfected lien, such as a recorded UCC-1 statement, to support the claim of a recorded lien.

3. The plan does not propose to pay all priority claims, 11 U.S.C. § 1322(a)(2). Debtor's plan fails to provide for payment of the priority claim of State Board of Equalization (Proof of Claim No. 7) filed by Debtor's counsel on June 20, 2014 in the amount of $50,000.00. In his motion to confirm, Debtor now claims that Board of Equalization "desires" treatment outside the plan as a business obligation. In Debtor's declaration, however, the Debtor indicates that the Board of Equalization demands to be paid by the business. Debtor offers no evidence to support the claim that Board of Equalization has made any request for payment outside of the plan. Debtor offers no evidence that the claim is being paid by the business.

4. Debtor's plan indicates that attorney fees total $18,000.00, $3,000.00 of these fees were paid prior to filing. The plan also indicates that Debtor's counsel will file and serve a motion for approval of the fees to be paid through the plan. Debtor's attorney has not explained why or how these payments will be made directly by the Debtor, and it is not clear to the Trustee whether Schedule J is accurate considering these fees.

DISCUSSION

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

The Trustee's objections are well-taken. As to the treatment of Advance Restaurant Financial, the actual treatment of the creditor raises concerns as to the feasibility of the plan as well as whether the Debtor is attempting to unfairly discriminate against other unsecured creditors. The actual status of the creditor's claim is questionable, after a review of the creditor's Proof of Claim. While the creditor lists the claim as unsecured, a review of the Proof of Claim appears that it may actually be secured but fails to provide the perfecting device. Without anymore information as to whether it is appropriate to list the creditor as a Class 4 and whether, as an unsecured claim, it is receiving more or less than it would under Class 7, the plan is not confirmable.

Much like the failure of the Debtor to file evidence to justify the treatment of Advance Restaurant Financial, the Debtor fails to provide evidence that the treatment of the Board of Equalization is proper. While the Debtor provides conclusory statements in the Motion and Declaration, the Debtor does

not provide any evidence that the Board of Equalization actually requested to be paid through the business. It again raises serious concerns over the feasibility and viability of the plan when the Debtor does not disclose the evidence to justify the proposed plan.

Lastly, without a Motion for Compensation filed, the attorney's fees are not currently approved. Furthermore, given the large amount of fees, it raises concerns as to whether those fees are justified and whether the Debtor has the ability to pay them given the information provided for in Schedule I and J.

The failure of the instant plan is the lack of any support by the Debtor to support the treatment of creditors and whether the plan is actually feasible. Without more, the plan is not confirmable.

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

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

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

57. 14-32085-E-13 PATRICIA MELMS
DPC-1 Jeremy Heebner

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-18-15 [34]

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.

Notice Provided. The Trustee has failed to attach a Proof of Service. 14 days' notice is required. However the Debtor has responded to the Objection.

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. It appears that the Debtor cannot make payments required under 11 U.S.C. § 1325(a)(6). The Debtor is $2,895.00 delinquent in plan payments to the Trustee to date. The Debtor has paid $0.00 into the plan.

2. It is not clear the Debtor can make the payments under the plan or comply with the plan due to the expenses being improperly listed. 11 U.S.C. § 1325(a)(6). The Debtor lists Ocwen Loan Servicing in Class 4 of the plan. Schedule J does not list an expense for Ocwen in the amount of $1,680.00 per month. The Debtor lists Sierra Central Credit Union in Class 4 of the

plan. Line 24 states part that the Debtor will make the loan payment of $210 per month for approximately 6 months and will cut her entertainment budget in the meantime. Line 13 lists entertainment in the amount of $111.84 which is $138.16 less than the amount of the monthly obligation in the amount of $250.00 listed in Class 4 to Sierra Central Credit Union.

3. Section 6 of the plan states in part that the Debtor will sell boat during months 1-9 of the plan and will pay the secured claim in full of Sierra Central Credit Union. It is not clear to the Trustee, why the Debtor has proposed to sell the boat within the first 9 months of the plan. It does not appear the Debtor has received authorization to sell the boat from the court. The Trustee believes that the Debtor has not provided sufficient evidence to show that they will actually sell the boat and make the payment directly, rather than simply provide for the claim to be paid by the Trustee in the Plan.

4. The Debtor has failed to provide section numbers for Section 6 of the plan.

DEBTOR'S RESPONSE

The Debtor filed a response to the Trustee's objection on March 17, 2015. Dckt. 42. The Debtor responds in order of the Trustee's objection as follows:

1. Debtor is admittedly delinquent on her plan because she did not realize that a payment was due in January. Instead the Debtor spent the money on a car repair of approximately $2,000.00. Once the Debtors realized a payment was due, she tried to catch but is still behind. The Debtor states that she will catch up on the delinquency in the next two months by making regular payments plus several hundred dollars extra each month.

2. Debtor does not list Ocwen as an expense because Debtor will probably be surrendering the Property securing the claim. As to cutting expenses, Debtor will cut expenses as much as necessary to afford to $210.00 payment to Sierra Central Credit Union. She is also trying to sell the boat as quickly as possible so that she will not have to continue cutting expenses.

3. Debtor is about $15,000.00 behind on payments to Ocwen. Debtor is looking into trying to modify the loan but will likely be surrendering the property. Under either option, Debtor states that Ocwen does not belong in Class 1. If the loan is modified, Ocwen should be in Class 4. If the loan is not modified, Debtor will surrender the property. The Debtor states that surrendering is most likely and the plan will be modified to move Ocwen from Class 4 to 3.

4. Debtor is trying to sell the boat currently. Debtor believes that selling the boat may take a long time which is why the Debtor listed the ale as happening in the first nine months.

5. Debtor will amend the plan so the Additional Provisions will be labeled.

DISCUSSION

The Trustee's objections are well-taken.

The fact that the Debtor admits to being delinquent is an independent ground to deny confirmation. If the Debtor cannot perform under the terms of the plan, then the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(6). The Debtor's argument that she can cure it through increasing plan payments over two months does not cure the delinquency nor does the Debtor provide evidence of where she will be getting the "several hundred dollars" to add to the plan payments.

As to the Trustee's second and third objections, they are once again well-taken. The Debtor appears to be providing an "expected" financial reality instead of providing the court and the Trustee with accurate accounting of the Debtor's current budget. As evidenced by the Debtor's response, the Debtor's expenses and plan are all contingent on actions that may or may not be taken. For instance, the fact the Debtor may or may not surrender the property or may seek loan modification does not justify the Debtor to providing expenses based on any of those "maybe" outcomes. The Debtor must provide the finances as they currently stand, not where they may be. Therefore, the plan does not seem feasible in light of Debtor's current financial reality.

The concern over the selling of the boat also brings into question the viability of the plan. Once again, the Debtor is conjecturing on what may or may not be happening in the future. The Debtor has not moved the court to sell the boat and the Debtor once again says she will be cutting her budget as much as necessary to make the $210.00 payments which raises concerns of the court of whether the listed expenses are the actual expenses if the Debtor is able to manipulate them to come up with the payments.

As to the issue concerning the Additional Provisions, this appears to be a mere scrivener's error but, in light of the other objections, the plan is not confirmable.

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

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

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

58. 14-32085-E-13 PATRICIA MELMS
MRL-2 Jeremy Heebner

MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC.
3-9-15 [38]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March, 10 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim Real Time Resolutions, Inc. As agent for the Bank of New York Mellon FKA The Bank of New York, as successor to JP Morgan Chase Bank, N.A. as Trustee for the certificate holders of CWHEQ Revolving Home Equity Loan Trust, Series 2006-1 ("Creditor") is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Patricia Rene Melms ("Debtor") to value the secured claim of Real Time Resolutions, Inc. As agent for the Bank of New York

Mellon FKA The Bank of New York, as successor to JP Morgan Chase Bank, N.A. as Trustee for the certificate holders of CWHEQ Revolving Home Equity Loan Trust, Series 2006-1 ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1280 Virage Lane, Chico, California ("Property"). Debtor seeks to value the Property at a fair market value of $308,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $345,562.00. Creditors second deed of trust secures a claim with a balance of approximately $61,254.64. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Patricia Rene Melms ("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 Real Time Resolutions, Inc. As agent for the Bank of New York Mellon FKA The Bank of New York, as successor to JP Morgan Chase Bank, N.A. as Trustee for the certificate holders of CWHEQ Revolving Home Equity Loan Trust, Series 2006-1 secured by a second in priority deed of trust recorded against the real property commonly known as 1280 Virage Lane, Chico, 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 $308,000.00 and is encumbered by senior liens securing claims in the amount of $345,562.00, which exceed the value of the Property which is subject to Creditor's lien.

59. 14-30389-E-13 MELISSA JONES
DPC-3 Peter Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-18-15 [51]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 18, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Objection to Exemptions on February 18, 2015. Dckt. 51. The Trustee states that the Debtor claims four exemptions from the California Code of Civil Procedure §§ 704.730(1)(2), 704.020, 704.010, 704.110(b), and one claimed from the Government Code § 21201.

Trustee states that the claim of exemption is after the court disallowed the prior claim of exemptions, where the Trustee had objected to the exemptions which were claimed in property transferred to the Trust and

scheduled as belonging to the Debtor and to the claim of exemption in 75% of the trust as not being from paid earning. Dckt. 33.

The Debtor amended Schedule B to reflect that all of their personal property is in the trust. The Trustee renews his objection to exemptions as a creditor could attempt to levy on the trust to sell the Debtor's interest, which potentially is an avoidable pre-petition transfer. While authority exists that the Debtor can claim a homestead exemption in a property held by a revocable trust based on a future reversionary interest, the Trustee believes that the case should not control. See *In re Moffat*, 107 BR 255 (Bankr. C.D. Cal. 1989).

The Trustee argues that the Debtor appears to believe that they can claim exempt their interest in the property commonly known as 3104 Lazy J Court, Antelope, California (the "Property") as a homestead under California Code of Civil Procedure § 704.730(a)(2). If the Debtor has transferred title to a trust, the Debtor no longer owns the house. While the Debtor may still own an interest in the trust, the trust is a separate legal entity, and whether the Debtor has a surviving legal or equitable interest in the trust that can be claimed as exempt should require evidence of the trust, and the Debtor may not be entitled to exempt it if they have a legal or equitable interest, but a homestead is a principal dwelling which does not include a leasehold estate with an unexpired term of less than two years or the interest of the beneficiary of a trust. California Code of Civil Procedure § 704.910(c).

The Debtor appears to claim $3,900.00 of exemption in the trust property as household furnishings, appliances, provisions, wearing apparel and other personal effects if ordinarily and reasonably necessary under California Code of Civil Procedure § 704.020. The Trust property appears to include such items but also case, checking and savings account, a 401k, and vehicles, which clearly would not be allowable under the exemption if claimed separately.

The Debtor claims $2,900.00 of exemption in trust property as deriving from motor vehicles under California Code of Civil Procedure § 704.010. The trust property appears to include such items, but also includes items which clearly would not be allowable under the exemption if claimed separately.

The Debtor claims $2,000.00 of exemption in trust property as either derived from public retirement or disability retirement. The trust property appears to include a 401(k) which may or may not be such an item, and also includes items which clearly would not be allowable under the exemption if claimed separately.

The Trustee states that the Trust was created two months prior to filing and all assets listed in the petition are held in trust. Unless the court finds that the trust was effectively revoked by the bankruptcy filing which includes claiming all the property as an individual, Debtor's interest is in a trust potentially subject to recovery as an avoidable transfer under 11 U.S.C. §§ 548 and 551.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's objection on March 10, 2015. Dckt. 56.

The Debtor argues that the trust is revocable. There is no basis to support the Trustee's bare assertion that a potential pre-petition transfer exists, having failed to plead the elements of either 11 U.S.C. § 548, nor 551 which Debtor argues are not applicable.

The Debtor argues California Code of Civil Procedure § 704.703(a)(2) is proper because the revocable status of the trust is not a transfer which causes the Debtor to lose interest in the home. A review of the county register's office reflects an ownership interest and a corresponding secured claim. Having an ownership interest in her personal swelling allows the Debtor to exempt the home.

The 401(k) has a value of $2,000.00, bank accounts totaling $300.00, and two cars totaling $5,300. While the 401(k) and bank accounts are clearly exemptible, the Debtor does concede that the car exemption is $2,900, and therefore $2,400.00 in non-exempt.

The trust was prepared to protect her children in case of her becoming a domestic abuse victim or death. Debtor's intent was not to hinder, delay, nor defraud creditors. Given then the lack of case history in support of declining revocable trust the ability to exempt property as the Debtor does still own the property, an exemption is proper.

The Debtor argues that the Debtor has a current value of $21,201.00 in assets and has claimed $8,800.00 in exemptions, which allows for $12,401.00 in non-exempt equity to be paid for the benefit of creditors.

DISCUSSION

The Objection and the Response are long on argument and short (or just plain absent) on law. No authorities are provided for how the assets of a revocable trust are treated in bankruptcy. More significantly, neither party has directed the court to any California authorities for when and what exemptions may be claimed in property that is placed in a revocable trust. See *Law v. Siegel*, ___ U.S. ___, 134 S. Ct. 1188; 188 L. Ed. 2d 146 (2014), instructing the court and parties to look to the applicable exemption law, and not merely rely on the § 105 trump card.

California Probate Code Section 18201 expressly addresses the exemptions that a settlor of a trust may assert against his or her creditors – the exemptions to which such a settlor is entitled to as a matter of California exemption law.

> "§ 18201. Exemptions for settlor whose property is subject to creditor claims
>
> Any settlor whose trust property is subject to the claims of creditors pursuant to Section 18200 shall be entitled to all exemptions as provided in Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure."

California Probate Code Section 18200 expressly addresses the rights of creditors to reach assets of a judgment debtor in a revocable trust.

> "§ 18200. Creditor's rights against revocable trust during settlor's lifetime
>
> If the settlor retains the power to revoke the trust in whole or in part, the trust property is subject to the claims of creditors of the settlor to the extent of the power of revocation during the lifetime of the settlor."

Property of the bankruptcy estate include all legal and equitable interests of the debtors. 11 U.S.C. § 506(a). In this case, Debtor asserts that the trust is a revocable trust, and that Debtor has the legal and equitable rights to revoke the trust to transfer title back into Debtor's individual name. Substantively, Debtor, as trustee of the trust, is holding bare legal title, subject to the rights of Debtor to control and have title to the property returned at any time.

The property in the self-settled, revocable trust or not subject to spendthrift provisions is property of this bankruptcy estate. Other courts have so held in similar situations, including the following:.

A. *Neuton v. Danning (In re Neuton)*, 922 F2d 1379 (9th Cir. 1990);

B. *Yorke v Bank One Wis. Trust Co. N.A. (In re Smith)*, (1995, ND Ill) 189 BR 8, 10-11 (ND Ill 1995).

> "A beneficial interest in a trust is an equitable interest under § 541(a)(1) despite the fact that at the time of filing a bankruptcy petition the debtor's interest is unvested and contingent. *In re Neuton*, 922 F.2d 1379, 1382-1383 (9th Cir. 1990). 'The mere fact that the interest of the beneficiary is contingent and not vested does not preclude creditors of the beneficiary from reaching it.' *Id* quoting, Restatement (2d) of Trusts § 162."

C. *Cutcliff v Reuter (In re Reuter)*; 427 BR 727 (Bkcy WD Mo. 2010),

> "The bankruptcy estate succeeds to "all legal or equitable interests of the debtor in property as of the commencement of the case," including those powers that the debtor may exercise for his own benefit. 11 U.S.C. § 541(a)(1), (b)(1). Where there is no provision in a trust restraining voluntary or involuntary alienation of any of the beneficiary's interest in the trust, every right of the debtor under the trust is property of the estate. See *In re Woods*, 422 B.R. 102, 107-08 (Bankr. W.D. Ky. 2010). Any interest which a debtor retains in a trust is property of the estate, including the power to amend the trust and the power to revoke a revocable trust and recover the remaining funds in the trust for the benefit of the creditors. See *Askanase v. LivingWell, Inc.*, 45 F.3d 103, 106 (5 nth Cir. 1995); *In re Gifford*, 93 B.R. 636, 640 (Bankr. N.D. Ind. 1988)."; and

D. *Branch Bank & Trust Co. v DelFosse (In re DelFosse)*, 442 BR 481, 485 (Bkcy WD Va 2010),

> "Since the Trust constitutes a revocable living trust, the Court finds that the revocable living trust constitutes property of the estate under 11 U.S.C. § 541. *In re Arnold*, 369 B.R. 266 (Bankr. W.D. Va. 2007). Accordingly, the Court finds that because the Trust is property of the estate the Property held by the Trust is also property of the estate under § 541."

Debtor "admits" that the trust is a revocable trust. The Trustee does not dispute that this is a revocable trust. As such, all of the property of the trust is property of the estate and, as a matter of California exemption law, Debtor may assert whatever exemptions exist under California law in the property of the estate. FN.1.

FN.1. The Trustee has not alleged that this was established as an irrevocable trust and that the transfers must be set aside with the avoiding powers under the Bankruptcy Code. If so, it could raise the possibility of the Debtor not being able to claim an exemption in property of the estate which was recovered by the estate. 11 U.S.C. § 522(g).

DISCUSSION OF EXEMPTIONS CLAIMED BY DEBTOR

The Debtor filed an amended Schedules B and C on January 27, 2015. Dckt. 37. A review of the Debtor's Schedule B shows that the Debtor lists the property individually but list the current value as "trust." It is not until Item 35 on Schedule B where Debtor lists the "Melissa Jones Living Trust" and lists the individual value for each piece of property in the Trust. Looking at Debtor's Schedule C, the Debtor attempts make a general claim of exemption of these assets in the Melissa Jones Living Trust on three different California Code of Civil Procedure sections.

However, Debtor does not identify a specific exemption to a specific asset. Instead, Debtor merely lists all of the assets and then three possible exemptions – leaving it to the Trustee, creditors, and the court to assign exemptions to assets. It is for the Debtor to identify the asset and specify the exemption. While the Debtor may believe that it should be "obvious" as to how the court should apply the exemptions for Debtor, the court declines the opportunity to draft, through interpretation, Amended Schedule C. (The pile of assets in which exemptions are to be claimed run the gamut from "res" to two vehicles, a 401k, a "chase," and to $10,000.00 cash.)

As discussed supra, the Debtor may have the authority to claim exemptions in property held in a revocable living trust in which she has an interest, that authority, however, does not translate to claiming multiple exemptions in the trust itself for parties in interest to determine which exemption goes to which property. The transfer of the property to the trust does not transfer those exemptions into the trust itself – the exemptions remain with the individual pieces of property themselves.

Therefore, because the Debtor has failed to claim exemptions in individual pieces of property under California Code of Civil Procedure, the

objection is sustained and the exemptions are disallowed in their entirety as it applies to the Melissa Jones Living Trust.

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 exemptions are disallowed in their entirety.

60. 13-29694-E-13 SINA TOGIAI **MOTION TO MODIFY PLAN**
SJS-4 Scott Johnson **2-12-15 [48]**

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 February 12, 2015. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

Sina Togiai ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 12, 2015. Dckt. 48.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 26, 2015. Dckt. 57. The Trustee objects on the following grounds:

1. The Debtor's proposed plan identifies Wells Fargo Bank, N.A./2006 Chevy Tahoe is Class 2A2. The Debtor's confirmed plan identifies the creditor as Capital One Auto Finance. The Debtor

filed Proof of Claim No. 6 on behalf of creditor Capital One Auto Finance on November 14, 2013. The claim of Capital One Auto Finance is not provided for in the proposed plan.

2. The Trustee is uncertain of the proposed dividend on Class 1 arrears claim of ANZ Guam. The monthly dividend per the plan confirmed is $125.00 per month. Section 6 Additional Provisions of the proposed plan states a monthly dividend of $301.20 to be resumed September 2015. As the creditor has been receiving monthly dividends under the confirmed plan a suspension of monthly dividends to be resumed September 2015 would not comply with Secured Claims 2.08(a) of the plan which states equal monthly installments.

DISCUSSION

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

The Trustee's objections are well-taken. A comparison of the confirmed plan and the proposed plan shows a discrepancy as to the holder of the claim for the 2006 Chevy Tahoe. The confirmed plan lists Capital One Auto Finance as the creditor yet the proposed plan lists Wells Fargo Bank, N.A. A review of the Proof of Claims shows that Wells Fargo Bank, N.A. filed Proof of Claim No. 1 as to the Nissan but no Proof of Claim has been filed by Wells Fargo Bank, N.A. as to the Chevy. As the Trustee notes, the Proof of Claim No. 6 filed by the Debtor lists Capital One Auto Finance as the creditor for the Chevy. This discrepancy is grounds to deny the plan because it does not provide sufficient information on where the plan payment dividend for that claim should be sent.

As to the Trustee's objection to the treatment of ANZ Guam in Class 1, the court is also unsure what the Debtor means by "Month to Resume Dividend: September 2015." Dckt. 50. The Debtor seems to be implying that the payment to ANZ Guam, Inc. has been suspended but does not provide any rationale as to why. The Debtor does not provide information as to whether the Debtor has overpaid the claimant, if the Debtor has had negotiations with the creditor, or any of the other possible explanations to justify the apparent suspension of the Class 1 payment. The uncertainty surrounding the claim makes it difficult, if not impossible, to determine the feasibility of the proposed plan, namely because the court cannot discern how the Class 1 creditor is actually being treated. Without more information, the plan does not provide sufficient information as to how the plan will be executed and, thus, cannot be confirmed.

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

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

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

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

61. 13-23599-E-13 IVAN MONTELONGO
PGM-7 Peter Macaluso
MOTION TO MODIFY PLAN
2-6-15 [124]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 6, 2015. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is continued to 3:00 p.m. on June 9, 2015 to be heard in conjunction with Debtor's Motion to Approve Loan Modification.

Ivan Montelongo ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 6, 2015. Dckt. 124.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 139. The Trustee objects on the following grounds:

1. The Debtor is delinquent $140.00 under the terms of the proposed modified plan. According to the proposed plan, payments of $46,570.00 have become due. The Debtor has paid a total of $46,430.00 to the Trustee. It appears the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).

2. Debtor's proposed modified plan is contingent upon court approval of Debtor's loan modification. The Debtor filed a

Motion for Order Approving Loan Modification (Dckt. 131) which was heard on March 10, 2015. The Trustee filed an objection to that motion due to the uncertainty of whether the loan modification agreement was being offered by the party who is the actual owner or holder of the existing note, or what authority the party offering the loan modification has to offer the loan modification.

3. Debtor's declaration provides no explanation for the various adjustments in expenses between prior Schedule J and current supplemental Schedule J (Dckt. 127, Exhibit 3). The Trustee provides the following chart highlighting the changes.

	August 14, 2014	February 6, 2015	Difference
Mortgage	$0.00	$1,105.85	+$1,105.85
Electricity/Heat	$147.00	$190.00	+$40.00
Water/Sewer/Garbage	$100.00	$45.00	-$55.00
Telephone/Cell/Cable	$0.00	$51.00	+$51.00
Food	$200.00	$300.00	+$100.00
Medical/Dental	$0.00	$160.00	+$160.00
Transportation	$200.00	$150.00	-$50.00
Entertainment	$7.22	$50.00	+$42.78

The Trustee notes that while the mortgage adjustment is undoubtedly due to Debtor's proposed reclassification of the mortgage and arrears from Class 1 to Class 4 and the pending loan modification, the balance of the adjustments remain unexplained. Debtor's budget appears to be very tight for a family of two.

4. The Trustee is uncertain of the treatment of the Internal Revenue Service in Class 2 of Debtor's proposed plan. Debtor classifies the Internal Revenue Service as Class 2B reduced based on value of collateral. The Trustee is unable to locate a motion to value regarding this creditor. Internal Revenue Service filed a claim for $83,054.80 on April 26, 2013 (Claim #2-1) claiming a secured portion in the amount of $6,559.64, an unsecured priority portion of $57,742.89 and an unsecured portion of $18,752.27. The creditor filed an amended claim on November 13, 2013 for $17,874.10, claiming a secured portion in the amount of $6,559.64, an unsecured priority portion of $9,249.66, and an unsecured portion of $2,064.80. Debtor classifies the Internal Revenue Service as Class 2B and indicates the value of the creditor's interest in its collateral is $5,860.64. The Trustee is unable to determine if

Debtor plans to value this creditor, or whether a classification of Class 2A would be more appropriate.

DEBTOR'S RESPONSE

The Debtor filed a reply to the Trustee's objection on March 17, 2015. Dckt. 147. The Debtor replies as follows:

1. Debtor will be current on or before the hearing.

2. Debtor's loan modification has been continued for Ocwen Loan Servicing to show the ability to offer such a loan modification.

3. Absent the medical/dental which was deferred for the first two years of the plan, all other expenses increased and are reasonable for the cost of living. The Debtor is being frugal.

4. The Internal Revenue Service's proof of claim dictates where no Motion to Value Collateral has been filed, and as such, should be provided for as a Class 2A claim. This could be remedied in the Order to Modify.

DISCUSSION

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

The Trustee's objections are well-taken. The Debtor appears to be delinquent, no evidence having been provided that the delinquency has been cured. The proposed plan does rely on the court granting the Motion to Approve Loan Modification which has been continued to 3:00 p.m. on June 9, 2015. Dckt. 144.

As to the expenses reduction, while they appear to be relatively reasonable, the Debtor's response does not provide explanation to justify the changes nor address the concerns that the budget may be unreasonably low for two people. Also, the Debtor is correct that the treatment of the Internal Revenue Service could be corrected in the Order Confirming.

However, in light of the pending Motion to Approve Loan Modification, the court continues the instant Motion to be heard in conjunction with the Motion to Approve Loan Modification to 3:00 p.m. on June 9, 2015. The Debtor shall file and serve a supplemental declaration on or before May 19, 2015 providing a more detailed explanation for the reduced expenses.

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 continued to 3:00 p.m. on June 9, 2015 to be heard in conjunction with Debtor's Motion to Approve Loan Modification.

IT IS ORDERED that the Debtor shall file and serve a supplemental declaration on or before May 19, 2015 providing a detailed explanation for the reduction in expenses in Debtor's supplemental Schedule J.

62. 15-20399-E-13 MARLENE MCDANIEL
DPC-1 Ashley Amerio

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-25-15 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor failed to appear at the First Meeting of Creditors held on February 19, 2015. The Meeting has been continued to March 19, 2015 at 10:00 a.m. The Trustee states that he does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.

The 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 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.