

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 5, 2016 at 3:00 p.m.

1. [10-28701](#)-E-13 STANLEY/JANELLE ORR MOTION TO SELL
PLC-4 Peter Cianchetta 3-18-16 [[89](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. By the court's calculation, 18 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 -----
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The Motion to Sell Property is denied without prejudice.

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

A. 2432 Granite Park Drive, Lincoln, California

The Debtor received a discharge on September 14, 2015. Dckt. 80. The order approving the Trustee's Final Report and discharging the Trustee was entered August 24, 2015. Dckt. 77. The instant case was reopened on December 23, 2015 in order to file an adversary proceeding for the determination of liability of the Debtor was discharged.

Unfortunately, the Debtor did not provide sufficient notice. Pursuant to Fed. R. Bankr. P. 2002(a)(2), a minimum of 21-days is required. Here, the Debtor only provided 18-days notice. This is insufficient and grounds to deny the Motion.

Furthermore, the Debtor does not attach the sale contract of the Property. Instead, the Debtor merely attaches the estimated escrow closing statement. Without a copy of the contract, the court nor any other party in interest is able to determine whether a sale should be approved.

Grounds Stated in Motion

Movant asserts that they have commenced an adversary proceeding to quiet title on the Property to clear title from a junior deed of trust for which no obligation remains to be secured now that Movant has completed their Chapter 13 Plan. Movant's Chapter 13 Plan provides that upon confirmation the property of the bankruptcy estate was revested in Movant. Dckt. 48. The Plan does not provide for the sale of the Property.

Movant was granted a discharge on September 14, 2015. Dckt. 81. The bankruptcy case was closed on September 28, 2015. Dckt. 82. To the extent that the bankruptcy estate retained any interest in the Property, it was abandoned to Movant by operation of law. 11 U.S.C. §§ 544(c) and § 350.

Movant requests that the court authorize Movant to sell the Property, but does not state a statutory basis for the court issuing such an order. Commonly, authorization to sell property of the bankruptcy estate is requested pursuant to 11 U.S.C. § 363(b), "The trustee [which includes a Chapter 13 debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, **property of the estate**...."

The court cannot determine a basis for issuing an order to approve a transaction between the post-plan completion, post-closing, post-closing debtor. Merely because a title company states that it seeks to have a federal judge exercise federal jurisdiction is not a basis as required under Article III, Section 2 of the United States Constitution.

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

IT IS ORDERED that the Motion is denied without prejudice.

2. [12-40001](#)-E-13 DENNIS/VICKI MCCOLLUM MOTION TO AVOID LIEN OF
MOH-2 Michael O'Dowd Hays DISCOVER BANK
2-26-16 [[52](#)]

Final Ruling: No appearance at the April 4, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 26, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Dennis and Vicki McCollum ("Debtor") commonly known as 402 Bowers Way, Wheatland, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,390.49. An abstract of judgment was recorded with Yuba County on April 4, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$153,915.00 as of the date of the petition. The unavoidable consensual liens total \$225,717.63 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Discover Bank, California Superior Court for Yuba County Case No. YCMCCVG11-0000033, recorded on April 4, 2011, Document No. 2011R-003891 with the Yuba County Recorder, against the real property commonly known as 402 Bowers Way, Wheatland, 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.

3. [13-34801-E-13](#) ESTHER HWANG
DCN-3 Eric Gravel

MOTION TO SELL
3-4-16 [[55](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is granted.

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. 9987 Macabee Lane, Elk Grove, California

The proposed purchaser of the Property is Sonia X Boui and Anthony Nguyen-Quang and the terms of the sale are:

1. Purchase price is \$345,000.00
2. \$10,000.00 in initial deposit

3. The purchase price will be sufficient to satisfy all known liens and encumbrances on the property as well as the closing and escrow costs.

At the time of the hearing the court announced the proposed sale and 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: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The sale provides for the sale of the Debtor's Property for a sale price that will be able to sufficiently satisfy all outstanding liens on the Property and covers any escrow and sale fees. The Debtor recognizes the potential need to modify the Chapter 13 plan depending on the sale and remaining proceeds. The Debtor also recognizes that any funds in excess of the sale and exemption will have to be turned over to the Chapter 13 Trustee.

Upon review of the proposed sale, the Motion is granted.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 Esther Hwang, the Chapter 13 Debtor, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Esther Hwang, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Sonia X Boui and Anthony Nguyen-Quang or nominee ("Buyer"), the Property commonly known as 9987 Macabee Lane, Elk Grove, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$345,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 59, 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.

4. 16-20602-E-13 THOMAS/SHANNON SHUMATE MOTION TO VALUE COLLATERAL OF
SDH-2 Scott Hughes BANK OF NEW YORK MELLON
2-23-16 [[20](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 23, 2016. By the court's calculation, 42 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 New York Mellon, serviced by Green Tree Servicing, LLC ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$00.00.

The Motion to Value filed by Thomas and Shannon Shumate ("Debtor") to value the secured claim of Bank of New York Mellon, serviced by Green Tree Servicing, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is

the owner of the subject real property commonly known as 5868 Herbert Court, Loomis, California ("Property"). Debtor seeks to value the Property at a fair market value of \$339,000.00 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.

No Proof of Claim Filed

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$386,413.54. Creditor's second deed of trust secures a claim with a balance of approximately \$65,539.68. 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 Thomas and Shannon Shumate ("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 New York Mellon, serviced by Green Tree Servicing, LLC secured by a second in priority deed of trust recorded against the real property commonly known as 5868 Herbert Court, Loomis, 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 \$339,000.00 and is encumbered by senior lien securing claims in the amount of \$386,413.54, which exceeds the value of the Property which is subject to Creditor's lien.

5. [16-20602-E-13](#) THOMAS/SHANNON SHUMATE
SDH-3 Scott Hughes

MOTION TO VALUE COLLATERAL OF
WOLLEMI ACQUISITIONS, LLC
2-24-16 [[27](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on February 24, 2016. By the court's calculation, 41 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 Wollemi Acquisitions, LLC, serviced by their agent Quantum3 Group, LLC ("Creditor") is granted and the secured claim is determined to have a value of \$8,000.00.

The Motion filed by Thomas and Shannon Shumate ("Debtor") to value the secured claim of Wollemi Acquisitions, LLC, serviced by their agent Quantum3 Group, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Dodge Charger ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in August 4, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,902.33. 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 \$8,000.00. *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 Thomas and Shannon Shumate ("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 Wollemi Acquisitions, LLC, serviced by their agent Quantum3 Group, LLC ("Creditor") secured by an asset described as 2007 Dodge Charger ("Vehicle") is determined to be a secured claim in the amount of \$8,000.00, 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 \$8,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

6. 16-20004-E-13 BRYAN/BERBEL CONNEELY
SDH-1 Scott Hughes

MOTION TO CONFIRM PLAN
2-18-16 [[23](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and parties requesting special notice on February 18, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 18, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [11-20307-E-13](#) KEVIN/ROCIO BAILEY
KE-8 Karen Ehler

MOTION TO APPROVE LOAN
MODIFICATION
2-26-16 [[109](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 26, 2016. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Kevin and Rociso Bailey ("Debtor") seeks court approval for Debtor to incur post-petition credit. HSBC Mortgage Services, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$2,621.49 a month to \$1,633.06 a month. The modification will:

1. Reduce interest rate from 8.03% to 5.00%
2. \$72,762.50 of the principal will be forgiven, reducing the mortgage principal from \$319,762.52 to \$247,000.00.
3. The new monthly payment amount includes principal, interest, and the escrow account for taxes and insurance.

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

On March 21, 2016, David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion. The Trustee states that he has no opposition to the Motion. According to the Trustee's records, the case completed as of January 30, 2016 and the Trustee filed a final report and account on March 15, 2016.

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

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

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

The Motion to Approve the Loan Modification filed by Kevin and Rociso Bailey having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the court authorizes Kevin and Rociso Bailey ("Debtor") to amend the terms of the loan with HSBC Mortgage Services, Inc., which is secured by the real property commonly known as 417 Hawk Drive, Woodland, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 112.

8. [15-21707-E-13](#) JUDITH LAYUGAN
TLA-2 Thomas Amberg

MOTION TO MODIFY PLAN
2-24-16 [[127](#)]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2016. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

Judith Layugan ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 24, 2016. Dckt. 127.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 21, 2016. Dckt. 143. The Trustee objects on the following grounds:

1. Section 6.03 of the proposed plan attempts to alter the court's prior order confirming regarding attorney's fees through the plan without having motioned the court. Additionally, section 2.06 and 6.03 are contradictory.

- a. Pursuant to the order confirming, attorney's fees to prior counsel were approved in the amount of \$4,000.00 with \$2,500.00 paid prior to the filing of the petition and \$1,500.00 paid through the plan. \$1,500.00 remains to be paid. Section 2.06 indicates Debtor's attorney was paid \$0.00 prior to the filing of the case, and by complying with Local Bankr. R. 2016-1(c), will be paid \$4,000.00 through the plan.
 - b. Section 6.03, number 2, contradicts Section 2.06 by stating, "Any funds currently on hand shall be held until Debtor's present Counsel makes an application for fees." The Trustee is unable to locate in the court docket where Debtor's counsel has made an application for fees.
 - c. Section 6.03, number 1, of the proposed plan states, "No additional fees shall be paid to Debtor's prior counsel."
2. Debtor's modified plan proposes to reclassify Ocwen Loan Servicing regarding Debtor's mortgage and arrears from a Class 1 secured claim to a Class 4 secured claim based on a modification. However, the Trustee asserts that the loan modification attached by the Debtor is a permanent modification and that the preconditions have been met. The Trustee states that the docket does not reflect that a motion to approve loan modification has been filed.
 3. The Debtor's declaration does not adequately explain all the adjustments in expenses. Debtor's modified plan proposes to reduce Debtor's plan payment from \$2,336.74 to \$150.00 based on a loan modification where Debtor's mortgage payment will decrease to \$1,403.71 from \$1,803.73, and mortgage arrears will be capitalized where the monthly dividend is currently \$540.73.
 - a. Debtor's current Schedule J increases Debtor's monthly expenses from \$1,634.48 to \$3,821.00. Dckt. 130, Exhibit A. The Trustee does not dispute the increases as it pertains to the mortgage payment to be paid directly by the Debtor in the amount of \$1,409.00, and the Trustee finds the increases in utilities such as water, sewer, garbage, telephone, cell phone, and food expenses to be reasonable. However, the Trustee does question the \$150.00 increase to childcare; \$60.00 increase in entertainment; and \$68.00 increase for her mother's car insurance.

DISCUSSION

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

The Trustee's objections are well-taken.

The court agrees with the Trustee that, as currently stated, the Debtor's proposed treatment for attorney's fees in the plan contradicts the prior order confirming and is internally conflicting. The Debtor, due to the change in counsel, appears to have attempted to create provisions to allow for the payment of attorney's fees to the Debtor's new counsel through applying for compensation pursuant to 11 U.S.C. § 330 and 331. However, the plan as presented does not propose a coherent form of providing attorney's fees. The prior order confirming provided for the payment of \$1,500.00 through the plan, but now, with the substitution of counsel, the plan seems to provide conflicting terms with the prior order confirming. Without a clear proposed process on how to distribute attorney's fees nor for the plan to properly comply with Local Bankr. R. 2016-1, the plan cannot be confirmed. 11 U.S.C. § 1325(a)(1).

As to the Trustee's second objection, the court finds that the plan relies on a loan modification that has yet to be approved by the court. The court's review of the case docket reveals that no Motion to Approve Loan Modification has been filed in the instant case. The attachment indicates that the Debtor has been operating under a trial loan modification and that the "final" loan modification will be effective as of April 1, 2016. Unfortunately, no such modification has yet to be approved. This is grounds to deny confirmation.

The court is also concerned with the Debtor's failure to accurately provide explanation as to the Debtor's increase in expenses. While, like the Trustee, the court also finds certain increases reasonable, but the court does find that the Debtor's declaration fails to provide sufficient information to the changes in expenses. Such conclusory determinations that the increases are "reasonable" does not equate to definitive evidence. Absent explanation from the Debtor as to the increases in expenses, 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).

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.

9. [16-20007-E-13](#) BRENDA GLOVER
DPC-4 PRO SE

OBJECTION TO DISCHARGE BY DAVID
P. CUSICK
3-4-16 [[35](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 4, 2016. By the court's calculation, 32 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) 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 Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on March 4, 2016. Dckt. 35.

The Objector argues that Brenda Glover ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on May 22, 2015. Case No. 15-24163. The Debtor received a discharge on September 8, 2015. Case No. 15-24163, Dckt. 15.

The instant case was filed under Chapter 13 on January 4, 2016.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "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." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on September 8, 2015, which is less than four-years preceding the date of the filing of the

instant case. Case No. 15-24163, Dckt. 15. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-20007), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

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

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

IT IS ORDERED that Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 16-20007, the case shall be closed without the entry of a discharge.

10. [16-20507-E-13](#) LABARRON ROBINSON
DPC-1 Matthew DeCaminada

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-9-16 [[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 and Debtor's Attorney on March 9, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor is delinquent \$100.00 in plan payments and has made \$0.00 plan payments to date.
2. The Debtor failed to appear at the Meeting of Creditors.

On April 1, 2016, the Trustee filed a status report. Dckt. 18. The Trustee states that the Debtor had appeared at the Meeting of Creditors and is current in plan payments. However, at the first Meeting of Creditors, the Debtor admitted that his 2014 tax return has not been filed but claims he will.

The Internal Revenue Service filed a priority claim in the amount of \$5,269.22 on February 16, 2016. The Trustee calculates that the plan would take 16 months to complete.

The Trustee's objections are well-taken.

The basis for the Trustee's original objection have been remedied. However, the Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2014 tax year still has not been filed. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to deny confirmation.

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.

11. 16-20408-E-13 BRUCE/BERNICE WATSON
SW-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY FINANCIAL
2-26-16 [[13](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on February 26, 2016. By the court's calculation, 39 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 overrul the Objection.

Ally Financial ("Creditor") opposes confirmation of the Plan on the basis that:

1. The Debtor's plan fails to provide the Creditor's full value of its claim. The plan provides only for \$9,107.80 while the Creditor filed Proof of Claim No. 1 listing \$12,518.56 as the amount owed.
2. The Debtor's plan fails to provide an appropriate interest rate for the Creditor's full claim. The Creditor states that the Creditor should get at least 6.25% interest on its claim while the plan only provides for 3.25%.

DEBTOR'S REPLY

The Debtor filed a reply to the instant Objection on March 21, 2016. Dckt. 19. The Debtor states that:

1. Debtor concedes that the prime was 3.25% plus a risk of .75% as the balance is being paid in full. The Debtor states that 4.00% risk interest rate is appropriate.
2. The balance claimed by Creditor being \$12,518.56 and interest being 4.00%, Debtor is requested to provide a dividend to Creditor of at least \$231.00 per month over 60 months.

DISCUSSION

Here, the Creditor objects on the basis that the plan does not properly state the arrearage amount. However, as stated in Section 2.04 states:

- 2.04 The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claims unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

So, while the plan as proposed does not state the proper amount of arrears due, the Proof of Claim No. 1 controls.

The real issue is whether, with the correct arrearage amount, if the plan remains viable with the increased amount. First, however, the court must address the issue of the interest rate. The Creditor asserts that the interest rate does not properly protect the asset. However, outside of stating that "the Vehicle is a rapidly depreciating asset," the Creditor does not provide any argument or evidence as to why raising the interest rate to 6.25% is necessary and appropriate.

In fact, the Debtor proposes in their response to increase the interest rate to 4.00% to appropriately protect the Vehicle. This increase from 3.00% to 4.00% appears reasonable and adequately provides for the Creditor.

Now, amortizing the plan over the 60 months, and with the 4.00% interest rate, it appears that if the Creditor was to receive a dividend of \$231.00, and the plan as proposed would be viable.

Therefore, the Objection is overruled. The plan, after the Debtor corrects in the order confirming the monthly dividend, interest rate, and arrearage amount of Creditor, is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the 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 Objection is overruled, Debtor's Chapter 13 Plan filed on January 26, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the dividend for the Creditor and the pre-petition arrearage amount, 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. 16-20414-E-13 RALPH HASKELL
DPC-1 Robert Fong

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-2-16 [[13](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on xxxx, <year>. By the court's calculation, xx days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan may fail the Chapter 7 Liquidation analysis.
 - a. The plan provides for Debtor's reverse mortgage in Class 4 of the plan, with a \$0.00 monthly contract installment. Schedule D provides for RMS, Reverse Mortgage with a value of \$299,311.00 and a claim amount of

\$183,537.98. The Trustee is uncertain as to the amount the Debtor actually owes on this obligation based on the testimony at the Meeting of Creditors.

- b. The Debtor lists on Schedule B, line 19, the asset of Ralph T. Haskell, Inc., with a value of only \$10.00. The description states that assets include reversionary interest in Gold River Auto Repair. Debtor no longer has a license to operate, previously sold to Todd A. Shaw, with a right to recover business in event of non-payment. Limited value, not operational if recovered because of lack of licenses and equipment. The Trustee believes the value of the asset may be higher.
2. The plan is not the Debtor's best effort. The Debtor is over the median income and proposes plan payments of \$275.00 for 60 months with a 12% dividend to unsecured creditors. Debtor's Form B22C reflects negative disposable income of <\$1,616.01>. However, the Trustee's own calculations shows disposable income of \$2,607.00 for 60 months, which totals \$156,420.00 that unsecured creditors are entitled to. The following revisions were made by the Trustee:
- a. The Trustee removed the net mortgage or rent expense because the Debtor has a reverse mortgage and has not listed a mortgage expense on Schedule J.
 - b. The Debtor deducted \$1,054.17 for income taxes, however, the Debtor has only listed an expense for taxes of \$188.20 on Schedule I.
 - c. The Debtor deducts \$50.00 for additional health care expenses, however fails to list this on Schedule J.
 - d. The Debtor lists an expense on Schedule J in the amount of \$213.00 per month for storage. The Debtor admitted that he is storing his motorcycles and household goods in storage.
3. The Debtor's attorney, Robert Fong, has opted into the guidelines for payment of attorney fees in the amount of \$6,000.00. It does not appear that this is a business case and should only be permitted \$4,000.00.

The Trustee's objections are well-taken.

The Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that because the Debtor has a reverse mortgage and

has a reversionary interest in his sold business, the Debtor may have more equity than reported. The Debtor has supplied insufficient information relating to the real property to assist the Trustee in determining the value of the property especially in light of the reverse mortgage. Additionally, Debtor fails to report the actual equity that may be available in the Debtor's sold business. Without this information, it appears that the Debtor's plan fails the liquidation analysis.

The Trustee argues that the plan is not feasible nor the Debtor's best efforts. As discussed by the Trustee, the Debtor's proposed disposable income includes expenses that would not otherwise be calculated in. The Debtor attempts to include rent/mortgage payment when stating that he holds a reverse mortgage. Furthermore, the Debtor includes expenses such as supplemental health insurance and taxes on Form B22C but does not include the same amounts in Schedule J. These conflicting budgets and expenses makes it impossible to determine the viability or feasibility of the Debtor's plan.

Lastly, the Trustee is correct in that the Debtor's attorney appears to be claiming fee's for a business case when it does not appear that the instant case is one. The Debtor's plan proposes to pay the attorney through the plan pursuant to Local Bankr. R. 2016-1(c) in the amount of \$6,000.00. However, \$6,000.00 is only permitted for business cases. Therefore, the attorney's fee provision is improper and grounds to deny confirmation.

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.

13. [16-20414](#)-E-13 RALPH HASKELL
DPC-2 Robert Fong

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
3-2-16 [[17](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

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

IT IS ORDERED that the Objection to Debtor' Claim of Exemptions is dismissed without prejudice.

14. [10-49028-E-13](#) ANGELICA MARQUEZ
PGM-1 Peter Macaluso

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE
2-8-16 [[59](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 8, 2016. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

The Objection to Notice of Mortgage Payment Change 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 Objection to Notice of Mortgage Payment Change is continued to 3:00 p.m. on April 26, 2016.

APRIL 5, 2016 HEARING

From the responses and the circumstances, it appears that the request for additional time to allow the parties to continue in their investigation and negotiations.

The court continues the instant Objection to 3:00 p.m. on April 26, 2016. Nationstar shall file and serve any opposition, or a status report of the ongoing negotiations, on or before April 19, 2016.

REVIEW OF OPPOSITION

Angelica Marquez ("Debtor") filed the instant Objection to Notice of Mortgage Payment Change Filed on April 1, 2011 on February 8, 2016. Dckt. 59.

The Debtor asserts that BAC Home Loans Servicing, LP filed a Notice of Mortgage Payment Change on April 1, 2011. Based on the Notice, the Trustee increased its disbursement from the contracted amount of \$2,076.47 to \$2,761.51. The Debtor argues that BAC Home Loans Servicing, LP did not state the basis for the change in the Notice.

The Debtor asserts that the Debtor has provided for and paid the property taxes and insurance directly, as evidenced by the Debtor's Schedule J. The Debtor argues that BAC Home Loans Servicing, LP has been improperly charging a higher rate which caused the failure to cure the arrears to be paid in the plan.

The Debtor asserts that the increase should be denied, recalculated, accounted for and given credit to the Debtor's payment of arrears, rather than reflecting a shortage of \$27,273.69 remaining to be paid of arrears.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Objection on March 18, 2016. Dckt. 65.

The Trustee begins by summarizing the Debtor's objection as "The Debtor objects asserting the increase includes an escrow for property taxes and insurance where the Debtor was paying this directly, as reflected by \$533.00 in expenses on Schedule J, (DN #14, Page 16, Items 11a. & 12.)".

On the Debtor's Schedule J, the Trustee notes that the following was included:

Debtor pays the prop taxes and ins directly, however last statement showed an escrow account. Debtor disputes banks authority to charge her escrow accts when she is paying direct and will object to the POC if Bank takes adverse position.

Dckt. 14, line 19.

The Trustee does not believe Schedule J was served on any party.

The Trustee also states that if the Debtor is correct, the ongoing mortgage payment has been overpaid a sufficient amount that the pre-petition arrears of the mortgage could have been paid off if the creditor applies the overpayment to the mortgage. In the event the Debtor is incorrect, the plan will not complete within 60 months and no monies would have been overpaid.

The Trustee also notes that the Debtor served Bank of America, the attorney who filed the two proof of claim, McCarthy & Holthus, Claims #5 and 6; but the Debtor did not serve Nationstar Mortgage LLC who recieved the transfer of the claim. Dckt. 54

As review, the Trustee restates the case history. The Debtor's confirmed plan that was filed on November 15, 2010 provides for creditor BAC Home Loans in Class 1 with a monthly contract installment of \$2,077.00 with payments to begin December 2010. The Trustee received a statement from the creditor informing the home loan payment due on April 1, 2011 was \$2,761.51.

The Trustee changed the monthly contract installment amount to \$2,761.51, effective with the April 2011 disbursement.

The Trustee notified the Debtor and Debtor's attorney of the increase and informed the Debtor the plan payment was increased to \$3,899.92, effective April 25, 2011. The order confirming stated plan payments were to be \$3,180.00 for months 1 through 3 and \$3,272.00 for months 4 through 60.

Allegedly, the Debtor's attorney's office had corresponded with the creditor's attorney who filed the Proofs of Claim on behalf of the creditor regarding the increase in the mortgage payment. The creditor's attorney indicated in an email that the client had reverted the loan back to its non-escrow state and an amended Proof of Claim was filed.

However, the Trustee states that he never received any correspondence from the creditor indicating the monthly contract installment had changed from \$2,761.51. The Trustee did not change the monthly contract installment. The creditor has never filed a Notice of Mortgage Payment Change with the court.

The claim was transferred from BAC Home Loans Servicing, LP to Nationstar Mortgage, LLC on September 23, 2012. Dckt. 52. The Trustee has disbursed \$165,714.07 to the monthly contract installment. The Trustee has disbursed \$23,303.54 on the arrears claim of the creditor.

The Debtor appears to be asking the 57 ongoing payments disbursed to the creditor at \$2,761.51 be reduced to \$2,076.47 and that the excess payment be applied to the pre-petition arrears claim. This is an amount of \$39,047.28 which is grater than the remaining balance on the arrears claims.

NATIONSTAR MORTGAGE LLC RESPONSE

Nationstar Mortgage, LLC ("Nationstar") filed a response to the instant Objection on March 22, 2016. Dckt. 69.

Nationstar first states that it was not served with Debtor's Objection to Notice of Mortgage Payment Change. Nationstar, as stated by the Trustee, stated that the Debtor did not serve the Objection on Nationstar at the address stated in the Transfer of Claim. Dckt. 54. Nationstar asserts that because it was not properly and timely served it did not have time to properly investigate all allegations raised in Debtor's Objection

Furthermore, Nationstar argues that the Debtor has not provided evidence that the subject loan should not be escrowed. Nationstar cites to the underlying Note and Deed of Trust which states:

Borrower shall pay to Lender on the day Periodic Payments are due under the Note...payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument...(c) premiums for any and all insurance required by Lender. . .

Dckt. 70, Exhibit A.

Nationstar argues that the Debtor has not provided any evidence that their loan is not escrowed or that escrowing taxes and insurance is improper

for this loan. Nationstar also asserts that the Debtor has not provided any evidence that they paid the taxes and insurance on the Property. Nationstar asserts that simply attaching proof that the property taxes on the subject property have been paid for the last five years does not provide evidence as to who paid them. Nationstar asserts that the payments records do not indicate that the taxes were in any way overpaid during the duration of the plan, suggesting there was not double payment of the taxes by both the Debtor and Nationstar.

Nationstar requests that the court either overrule the Debtor's objection or to continue the Objection to allow Nationstar additional time to investigate the allegations.

DISCUSSION

A review of the Debtor's Proof of Claim and the Amended Proof of Service indicates that Nationstar is correct that the Debtor did not properly serve Nationstar. The Debtor served BAC Home Loans pursuant to all of their necessary addresses but only serves Nationstar at a P.O. Box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

In light of this failure, and the response of Nationstar, the court continues the instant Objection to 3:00 p.m. on April 26, 2016. Nationstar shall file and serve any opposition on or before April 19, 2016.

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 Notice of Mortgage Payment Change 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 continued to 3:00 p.m. on April 26, 2016. Nationstar Mortgage, LLC shall file and serve any opposition or a Status Report of ongoing settlement negotiations on or before April 19, 2016.

15. 16-20029-E-13 JAMES CHEUNG
FF-2 Brian Turner

MOTION TO CONFIRM PLAN
2-18-16 [[24](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2016. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 18, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

16. [11-41930-E-13](#) JERRY/VERONICA GORDON STATUS CONFERENCE RE: MOTION
SLE-1 Steele Lanphier FOR ORDER WAIVING DEBTOR
EDUCATION CERTIFICATE IN
GRANTING DISCHARGE TO DECEASED
DEBTOR
1-2-16 [[69](#)]

Debtors' Atty: Steele Lanphier

Notes:

Set by order dated 3/14/16 [Dckt 79]. The Chapter 13 Trustee and Debtor, Jerry Gordon, to file and serve separate status reports on or before 3/21/16. Debtor's status report not filed as of 3/28/16.

Status Report of Trustee filed 3/17/16 [Dckt 81]

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

MOTION TO REOPEN AND FOR ENTRY OF DISCHARGE

This voluntary Chapter 13 case was filed by Jerry Gordon and Veronica Gordon ("Debtors") on September 10, 2011. Debtors' confirmed Chapter 13 Plan required 36 monthly payments of \$315.00 each. The only creditor to be paid was the creditor having a claim secured by Debtors' vehicle. The final month for the plan was extended to March 2015. Confirmation Order, Dckt. 24. The Plan was funded with the income (Social Security and Pension) of Jerry Gordon.

This bankruptcy case was closed on May 13, 2015, without the entry of a discharge for either Debtor. On December 15, 2015, Debtor Jerry Gordon filed a motion to reopen the case so that he be allowed to file a certificate for completion of his required post-petition financial management course. Dckt. 63. The certificate for Jerry Gordon was filed on December 15, 2015. Dckt. 64.

On January 2, 2016, a motion was filed by the attorney for "Jerry Tugasala Gordon and Veronica Kavate Gordon" for an order to waive the post-petition financial education requirement for one of the Debtors - Veronica Gordon. Dckt. 69. The Motion states that Veronica Gordon passed away on September 13, 2013 - two and one-half years earlier.

The Motion for Waiver of the education requirement was noticed for hearing on February 6, 2016. Notice of Hearing, Dckt. 70. This was a Saturday, not a day on which the court hears motions in Chapter 13 cases. The Clerk's Office notified counsel of this error and that the motion must be properly noticed for February 9, 2016. Dckt. 72, 73. Debtor failed to re-notice the hearing or set the Motion for hearing on February 9, 2016.

The Trustee filed a response to the Motion which included reporting that Schedule B in this case disclosed that there was a term life insurance policy, but Schedule B does not clearly identify whose life the policy insured.

Though Debtor Jerry Gordon, and purportedly the deceased Veronica Gordon, have sought relief from the court in the Motion for Waiver, that motion has not been set for hearing and is outstanding. The Chapter 13 Trustee has not filed any further pleadings since raising the issue of there being a possible life insurance asset.

APRIL 5, 2016 STATUS CONFERENCE

The court ordered both the Chapter 13 Trustee and Debtor Jerry Gordon to file status reports on or before March 21, 2016, addressing specific issues identified by the court. Order, 79. This included advising the court whether Debtor Jerry Gordon intended to diligently prosecute the Motion for Waiver of the education requirement and what further action either Debtor Jerry Gordon or the Chapter 13 Trustee intended to take in this case.

Status Report Filed by Jerry Gordon - None.

Though ordered to file a status report, none has been filed by Debtor Jerry Gordon.

Status Report Filed by the Chapter 15 Trustee - March 17, 2016.

The Chapter 13 Trustee filed his Status Report, with supporting documents on March 17, 2016. Dckts. 81, 82, 84.

In his Status Report, the Chapter 13 Trustee states that the life insurance policy listed on Schedule B was likely for Debtor Jerry Gordon and not the deceased Debtor. The Trustee does not know if Debtor Jerry Gordon is going to seek to obtain a discharge for the deceased Debtor.

Review of Plan and Financial Information.

The Chapter 13 Plan in this case required monthly plan payments of \$315.00 for a period of 36 months. Dckt. 5. The case was filed on September 9, 2011. The Chapter 13 Plan was confirmed on December 5, 2010. Dckt. 24. The Trustee's final report was filed on April 9, 2015. Dckt. 51. (The completion of the Plan was delayed due to Debtor having defaulted in the last two monthly plan payments.)

17. [10-41542-E-13](#) DARIN/RENEE KNECHT
GW-3 Gerald White

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF GERALD L. WHITE
FOR GERALD L. WHITE, DEBTORS'
ATTORNEY
2-24-16 [[86](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 24, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Gerald White, the Attorney ("Applicant") for Darin and Renee Knecht ("Client"), makes a Second 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 August 17, 2011 through February 8, 2016. Applicant requests fees in the amount of \$2,080.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including case administration including reviewing transfer of claims, communicating with Client, reviewing order approving final report and discharge, and obtained reconveyance of the second deed of trust. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 3.3 hours in this category. Applicant assisted Client with reviewing transfer of claims between creditors, communicated with creditors, reviewed final report and accounting from the Trustee, and reviewed the discharge of the Client.

Services to Obtain Reconveyance of Second Deed of Trust: Applicant spent 3.65 hours in this category. Applicant communicated with Ocwen Loan Servicing to finalize reconveyance of the second deed of trust, reviewed the Sacramento County Record's record, and confirmed reconveyance.

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
Gerald White	.1	\$250.00	\$25.00
Gerald White	6.85	\$300.00	\$2,055.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$2,080.00

Pursuant to prior Interim Fee Applications the court has approved pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330.

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$4,366.00	\$4,366.00
	<u>\$0.00</u>	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$4,366.00	

Costs and Expenses

Pursuant to prior interim applications, the court has allowed costs of \$274.00.

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. Second Interim Fees in the amount of \$2,080.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and prior Interim Fees in the amount of \$4,366.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Debtor from the available funds held by the Applicant in trust for the Chapter 13 Debtor in the amount \$750.00 and the remainder to be paid by the Chapter 13 Debtor.

Costs and Expenses

The prior Interim Costs in the amount of \$274 are approved pursuant to 11 U.S.C. § 330.

Applicant is allowed, and the Chapter 13 Debtor is authorized to pay, the following amounts as compensation to this professional in this case:

Fees \$2,080.00

pursuant to this Application and prior interim fees of \$4,366.00 and interim costs of \$274.00 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Gerald White ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Gerald White, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$2,080.00,

The Fees pursuant to this Applicant, and Fees in the amount of \$4,366.00 and costs of \$274.00 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Debtor is authorized to pay the Applicant from the available funds held by the Applicant in trust for the Chapter 13 Debtor in the amount \$750.00 and the remainder to be paid by the Chapter 13 Debtor.

18. [12-34546-E-13](#) KEITH/ZANETTA ROBINSON MOTION TO MODIFY PLAN
PGM-9 Peter Macaluso 3-1-16 [[201](#)]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 1, 2016. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

Keith and Zanetta Robinson ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 1, 2016. Dckt. 201.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 21, 2016. Dckt. 209. The Trustee opposes confirmation on the grounds:

1. The Debtor's plan may not be the Debtor's best efforts. According to the Debtor's supplemental Schedules I and J, Debtor 1 reports a monthly take-home pay of \$3,798.21 and Debtor 2 reports monthly net take-home pay of \$5,087.30, for a total of \$8,885.51. According to the Debtor's Exhibit B, Debtor 1 has monthly net take-home pay of \$3,721.07 per pay period ending January, 2016 and Debtor 2 has monthly net take-home pay

of \$6,609.08 per pay period ending January, 2016. These amounts total \$9,330.15, or \$444.64 more than reported on the most recent Schedule I.

Additionally, the Debtor reports on the Schedule J continuation sheet additional tax expenses in the amount of \$1,145.00. Dckt. 184. The Debtor states in their declaration that they do not expect to owe taxes in 2015 and thus the offset of \$1,145.00 per month is not needed and the money should be included in the plan. Te Trustee agrees iwth the Debtor's estimates.

The \$1,145.00 included in the budget as an offset for 2015 owed is not needed for the life of the plan and the payment should be increased when the back taxes are paid. The Debtor filed their 2014 taxes in April 2015 and would appear the payments would be complete after 12 months. It appears to the Trustee that the Debtor's plan payment effective March 2016 should be \$2,279.64 (\$690.00 (proposed) + \$444.64 (additional earnings) + (\$685.00 + 460)(2016 projected tax offset)). The payment of \$2,279.64 should be increased by \$1,145.00 when the 2014 taxes are repaid.

2. The Trustee is uncertain of the term proposed by the Debtor. Section 1.03 states 60 months. Section 1.01 states "\$152,765.00 through 2/2016, \$690.00 x 2, \$2,500.00 x 15". As 2/2016 is the 42nd month of the plan and the Debtor is only proposing 59 payments.

DISCUSSION

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

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

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

As outlined by the Trustee, there appears to be sufficient additional income to supplement the plan payments. The Debtor admits in the declaration that the proposed trax expenses will not be necessary, resulting in additional funds that can be applied to the Debtor's plan payments. Furthermore, there appears to be a substantial difference in the income reported on Supplemental Schedule I and the Debtor's Form B22C. There appears to be additional income that should be committed to the plan. Therefore, the plan is not confirmed.

Finally, the Trustee alleges that the Plan is not feasible, See 11 U.S.C. § 1325(a)(6), due to the Debtor failing to provide a plan that contemplates payments for 60 months. As calculated by the Trustee, it appears that the Debtor's plan only provides for 59 months rather than 60 months as required. As such, the plan may not 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.

19. 16-21446-E-13 ANGELA SEIBERT
DAO-1 Dale Orthner

MOTION TO EXTEND AUTOMATIC STAY
3-22-16 [[14](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and parties requesting special notice on March 22, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Angela Seibert ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-22737) was dismissed on January 27, 2016, after Debtor was delinquent in plan payment. See Order, Bankr. E.D. Cal. No. 15-22737, Dckt. 70, January 27, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtor's hours were reduced which caused her to miss plan payments. The Debtor states that her hours have been restored. The Debtor asserts that the Debtor's wages going forward will exceed those that cause her to fall behind in the Debtor's prior case.

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

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

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

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

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

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

20. [15-27047-E-13](#) PRISCILLA/ANDREW CARRASCO MOTION TO CONFIRM PLAN
PGM-2 Peter Macaluso 2-22-16 [[69](#)]

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 22, 2016. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Priscilla and Andrew Carrasco ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 22, 2016. Dckt. 71.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 4, 2016. Dckt. 81. The Trustee first reiterates the opposition to confirmation as to the employment status of Debtor Andrew Carrasco. The Trustee notes that the supplemental Schedule I continues to reflect that Debtor Andrew Carrasco is not employed and is receiving only \$1,408.00 from unemployment. However, Debtor Andrew Carrasco in his declaration filed on October 5, 2015 states that he was employed. Dckt. 27.

Schedule J reduced electricity, heat, natural gas by \$100.00 and reduced personal care by \$10.00. Debtor's monthly net income lists their net income as \$2,125.00.

The Trustee states that the Debtor has earned approximately \$562.80 per week and received reimbursement pay in the amount of \$1,044.40. It appears that Debtor Andrew Carrasco's gross income is approximately \$2,853.98 and his net income is approximately \$2,670.49. It appears that the Debtor's net income should be \$3,387.49, not \$2,125.00.

The Debtor is also \$2,125.00 delinquent in plan payments.

DISCUSSION

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

As before, the Trustee's objections are well-taken.

The Trustee raised this objection previously with the Debtor's previously proposed plan. In fact, the Debtor, in connection with that prior plan, filed a response stating that there will be a new plan because of the change in employment. However, the Debtor has failed once again to report Debtor Andrew Carrasco's employment. As shown in supplemental Schedule J, the Debtor Andrew Carrasco is still reported as unemployed. This is facially inaccurate and in opposition to what the Debtor himself reported to the court.

The court at the prior hearing on the previous proposed plan on January 12, 2016 explicitly stated:

Lastly, the Debtor admits to changes in employment. The Debtors income and expenses on Schedules I and J are no longer accurate which makes it impossible to determine whether the proposed plan is feasible or viable. In fact, the Debtor states in their reply that there is a need to file a second amended plan to account for the employment changes.

Dckt. 53.

Unfortunately, the Debtor and Debtor's counsel has continued to report this change. Reviewing the Supplemental Schedule I, Debtor Andrew Carrasco is still reported as not employed. Dckt. 79.

The Debtor was given "another bite at the apple" in filing a proposed plan when the court agreed to conditionally deny the Trustee's Motion to Dismiss if the Debtor filed an amended plan by a certain date. However, instead of taking that chance to provide accurate, truthful, and complete schedules and plans, the Debtor once again filed an inaccurate Schedule J. This alone is grounds to deny confirmation.

Additionally, the Trustee reports the Debtor remains delinquent in the amount of \$2,125.00. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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.

21.	15-29147 -E-13	JOHN QUIROZ	OBJECTION TO CLAIM OF PATRICIA
	RK-2	Richard Kwun	COSTLEY, CLAIM NUMBER 2
			2-20-16 [51]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

The court having previously issued an order continuing the Objection to Claim of Patricia Costly to 3:00 p.m. on May 24, 2016 (Dckt. 91), **the matter is removed from the calendar.**

22. [14-24955-E-13](#) ANTOINETTE TRIGUEIRO
SCG-3 Sally Gonzales

MOTION TO MODIFY PLAN
2-16-16 [[60](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 2016. By the court's calculation, xx 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 16, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [16-20263-E-13](#) JUDY BROWN
DPC-1 Joseph Canning

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-2-16 [[19](#)]

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 2, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the Objection to 3:00 p.m. on April 26, 2016.

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

1. The Debtor does not have regular income and is not eligible for Chapter 13 under 11 U.S.C. § 109(e).
2. The Debtor failed to appear at the First Meeting of Creditors held on February 25, 2016.

DEBTOR'S REPLY

The Debtor filed a reply to the instant Objection on March 22, 2016. Dckt. 23. The Debtor states that she acknowledges that Schedule J is negative \$1,667.00. However, as indicated on line 13 of Schedule I, Debtor is proposing to fund the payment of her Chapter 13 plan, and to pay for her ordinary household expenses during the plan term, with proceeds from a life insurance policy. Debtor's spouse passed away prior to the filing of the instant case. At the time of the filing, Debtor had on deposit with First Northern Bank an amount equal to \$55,315.51.

The Debtor also states that the Debtor and counsel for Debtor will appear at the continued meeting of creditors set for April 21, 2016.

DISCUSSION

The Trustee's objections are well-taken.

The Trustee first objects on the ground that the Debtor does not qualify for Chapter 13 debtor because she does not have regular income. The

Debtor replied by stating that she intends to use the life insurance proceeds to make plan payments and to pay necessary ordinary household expenses.

A review of Debtor's Schedules I and J shows that the Debtor is currently unemployed and is receiving \$954.00 per month in Social Security and \$1,245.00 for "pension or retirement income."

"The Bankruptcy Code neither defines income for eligibility purposes nor establishes when the eligibility determination should be made." *In re Pellegrino*, 423 B.R. 586, 590 (B.A.P. 1st Cir. 2010)(citing *In re Baird*, 228 B.R. 324, 327 (Bankr.M.D.Fla.1999) (explaining that the Bankruptcy Code does not define the word income, but it is to be interpreted broadly)). The test for regular income "is not the type or source of income, but rather its regularity and stability." *In re Pellegrino*, 423 B.R. at 590.

Here, the Debtor is actually receiving some sort of regular and stable income in the form of Social Security and "pension or retirement." As addressed by the Debtor, the Debtor is proposing to fund the plan through the life insurance proceeds, which supplements the Debtor's income. The court does find that the Debtor is eligible for Chapter 13 bankruptcy under 11 U.S.C. § 109(e) because the Debtor does have regular income through Social Security and retirement/pension income. Therefore, this ground for opposition is overruled.

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

The Meeting of Creditors has been rescheduled for April 21, 2016. In light of the Trustee's only remaining objection being the Debtor's failure to appear at the Meeting of Creditors, the court continues the instant hearing to 3:00 p.m. on April 26, 2016.

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 continued to 3:00 p.m. on April 26, 2016.

24. [15-28165-E-13](#) LEON VICENTE AND ANGELA MOTION TO CONFIRM PLAN
TOG-4 XILOJ 2-10-16 [[42](#)]
Thomas Gillis

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2016. By the court's calculation, xx 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.

Leon Vicente and Angela Xiloj ("Debtor") filed the instant Motion to Confirm the Plan on February 10, 2016. Dckt. 42.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 4, 2016. Dckt. 49. The Trustee opposes confirmation on the following grounds:

1. The Debtor's plan relies on the Motion to Value Collateral of Ditech Financial LLC.

DISCUSSION

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

The Trustee's objection is well-taken. A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Ditech Financial LLC. However, the court denied the Debtor's Motion to Value Collateral of Ditech Financial LLC on March 22, 2016. Without the court valuing the claim, the plan is not feasible. 11 U.S.C. § 1325(a)(6). Therefore, the Trustee's objection is sustained.

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

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

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

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

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

25. [16-20374-E-13](#) KURT/BARBARA DELACAMPA
DPC-1 Michael Croddy

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-9-16 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 9, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor cannot make the payments under the plan or comply with the plan. The Trustee states that the Debtor has not properly completed their Chapter 13 documents correctly. It appears the Debtor failed to disclose the following information based on their admittance at the First Meeting of Creditors:
 - a. Rental income: Prior to filing their voluntary petition, the Debtor's were receiving rental income in the amount of \$500.00 from Jason Bell. This income was

not reported on the Statement of Financial Affairs or Form 122C-1. The Debtors stated at the First Meeting, Debtor Bell quit paying rent two months ago and was moving that weekend.

- b. Identify Property: The Debtor's admitted at the First Meeting of Creditors they are storing less than 10 automobiles on their property. The Debtor admitted not all the autos on the property are theirs. It appears the Debtors failed to disclose this information is Part 9 of the Statement of Financial Affairs.
- c. Preferential Transfers: The Statement of Financial Affairs, question no. 18 lists a transfer of a 2006 Sand Piper Trailer to Mike Braxton, Debtor's son in December 2016. According to the Debtors at the First Meeting of Creditors, they transferred the 5th automobile to their son in law in December 2015.

An total of \$7,500.00 was transferred to satisfy or pay off debts in December 2015. An additional \$1,000.00 was transferred to pay off a debt, however, the date the transfer was made was not disclosed.

- d. Valuation of the Property: The Debtor's plan calls for the surrender of real property, which the Debtor values in the amount of \$560,000.00. The Debtor admitted at the First Meeting of Creditors a manufactured home with an in-law unit, is located on the property. The manufactured home and the value of the home was not listed in the schedules.

The Trustee's objections are well-taken.

The crux of the Trustee's objection is that the Debtor failed to provide timely information and evidence concerning, among other things, the Debtor's rental income, the Debtor's manufactured home, the preferential transfers, nor identify which automobiles being stored are theirs. A review of the Debtor's schedules shows that this information is notably absent from the Debtor's filings.

The Debtor admitted at the Meeting of Creditors to these additional assets and payments which the Debtor did not address in the filings. It is facially clear from the petition that the Debtor has not completed all necessary areas with correct information. Without the Debtor submitting complete and full information, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

Objection to Confirmation Filed by Vicki Bell.

On April 1, 2016, Vicki Bell filed her objection to confirmation. Dckt. 21. The deadline for filing objection to confirmation was March 10, 2016. Notice of Bankruptcy, Section 9; Dckt. 12. No leave to file a late objection to confirmation was requested from the court.

The deadline for filing objections to claims of exemption was April 3, 2016, 30 days after the conclusion of the First Meeting of Creditors. Notice of Bankruptcy, Section 8; *Id.* Vicki Bell filed an objection to the claim of a homestead exemption in the Oregon Property. Dckt. 25.

The Vicki Bell objection to confirmation is that the Plan fails to provide the liquidation value of the assets - if the homestead exemption is disallowed. While the objection to confirmation is not timely, the objection to claim of exemption is timely, which "keeps in play" the full value of the Oregon Property for any plan which may be confirmed (or modified) in this case.

Sustaining Trustee's Objection to Confirmation.

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.

26. [16-20576-E-13](#) DANA MAGWOOD AND TRISHA GUTIERREZ-MAGWOOD
DPC-1 Dana Wares
OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-9-16 [[20](#)]

Final Ruling: No appearance at the April 5, 2016 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 (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on xxxx, <year>. By the court's calculation, xx 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 continue the Objection to 3:00 p.m. on April 12, 2016.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors. The Meeting was continued to March 31, 2016 at 11:00 a.m. The Trustee states that the Debtor's attorney informed the Trustee that neither Debtor were able to attend the Meeting because Debtor Dana Magwood had a deposition scheduled for the same day and Debtor Trisha Gutierrez-Magwood was out of town at a work related conference.

The Trustee requests that the Objection be continued to 3:00 p.m. on April 12, 2016, which is after the Continued Meeting, to allow the Debtor the opportunity to appear.

The Trustee's objections are well-taken.

The failure to attend the Meeting of Creditors is grounds to deny confirmation. 11 U.S.C. § 1325(a)(1). 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).

However, in light of the Meeting of Creditors being continued to March 31, 2016 and the request of the Trustee to continue the instant Objection, the Objection is continued to 3:00 p.m. on April 12, 2016.

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 continued to 3:00 p.m. on April 12, 2016.

27. [15-22182-E-13](#) RUTH CLARK MOTION TO CONFIRM PLAN
PGM-3 Peter Macaluso 2-11-16 [[135](#)]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 11, 2016. By the court's calculation, 54 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.

Ruth Clark ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 11, 2016. Dckt. 135.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 16, 2016. Dckt. 147. The Trustee opposes confirmation on the following grounds:

1. Debtor has failed to file a declaration in support of the Motion setting forth all the requirements of 11 U.S.C. § 1325(a).
2. The Declaration filed by Tom Carey does not offer any evidence of the source of the \$810.00 income or why he is making this income available to the Debtor. Mr. Carey's prior declaration stated that he would contribute up to \$400.00 per month. Dckt. 68. There is no explanation as to why the amount has been increased to \$810.00.
3. Debtor's stated living expenses are not reasonable. The Debtor lists food and housekeeping expenses at \$200.00, clothing/laundry/dry cleaning at \$5.00, and personal care at \$5.00. The Internal Revenue Service allowable living expense for one person as \$585.00 per month. The Debtor also lists total utilities at \$289.00 while the local housing and utilities standard is \$529.00 per month.
4. The plan indicates that there are additional provisions but none are attached.
5. It appears that the Debtor has improperly altered the Form Plan by explicitly stating that the additional provisions are appended when they are not.
6. Debtor cannot confirm a plan. This case was filed March 19, 2015. A full year has elapsed since the filing. Four plans have been proposed but none have been confirmed. The Trustee does not believe the Debtor can confirm a plan.

EL DORADO SAVINGS BANK'S JOINDER

El Dorado Savings Bank filed a joinder in the Chapter 13 Trustee's Opposition. Dckt. 150.

RESPONSE OF RUTH CLARK

The Debtor first responds, that because the Chapter 13 Trustee and Creditor objected, she has now filed her declaration. Additionally, a supplemental declaration of Tom Carey is provided. The Debtor believes that in her declaration she adequately addresses the issues relating to her stated living expenses.

In her Declaration, Dckt. 153, Debtor testimony includes the following:

- A. As of March 24, 2016, Debtor has paid \$12,809.09 to the Chapter 13 Trustee over 11 months. (Which averages \$1,164 a month.)
- B. Beginning with the March 2016 payment, Debtor will begin making payments of \$1,560.00.

- C. Telling the court that she "filed for protection under the bankruptcy code because my how was being foreclosed upon." [emphasis in original]
- D. The source of income to fund the plan will be from:
 - 1. Social Security (in an unstated amount);
 - 2. Annuity from Worker's Compensation (in an unstated amount);
 - 3. Food Stamps (\$120 amonth); and
 - 4. Assistance from Tom Carey (in an unstated amount).
- E. That the Debtor does not lie.
- F. Because Debtor does not live in the city, people like her who live in the country use less money to live than those in the city.
- G. Debtor is happy with her lifestyle.
- H. Debtor seeks no social acceptance, as she is satisfied with herself.
- I. Debtor follows the counsel of the Elders of her Church (unnamed).

In additional testimony of Tom Carey in his Supplemental Declaration, Dckt. 154, includes:

- A. He is the Debtor's
 - 1. Friend,
 - 2. Parishioner, and
 - 3. Family Member.
- B. His source of income is:
 - 1. State of California Retirement (in unstated amount);
 - 2. Chevron/Texaco Retirement (in unstated amount);
 - 3. Social Security;
 - 4. His Investment Account Mandatory Withdrawals;
 - 5. Wife's Retirement (in unstated amount);
 - 6. Wife's Social Security; and

7. Wife's Investment Account Mandatory Withdrawals.

- C. That Mr. Carey is providing the assistance because the Debtor is disabled and in recovery. Further, someday the Debtor will be gainfully employed and not need Mr. Carey's assistance.

DISCUSSION

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

The Trustee's objections are well-taken.

Once again, the Debtor has failed to properly and completely file a confirmable amended plan. This is the Debtor's fourth attempt at plan confirmation. However, the Debtor failed to file a declaration to provide testimony that the Debtor is in compliance with 11 U.S.C. § 1325(a). Without this information, confirmation is facially impossible.

Adequate Facts Withheld From the Court

Only after having her "back to the wall," was the Debtor willing (or forced) to provide a declaration to support the relief she was requesting. Such begrudging providing of the minimal evidence and prosecution of her case is not indicative of a debtor who commenced the case and is proposing the Chapter 13 Plan in good faith.

Once again, the declaration of Tom Carey fails to provide sufficient evidence as to how and why Mr. Carey is committing \$810.00 per month to the Debtor. This is especially worrisome when Mr. Carey's previous declaration indicated a contribution of only \$400.00. The one-page declaration filed by Mr. Carey does not address why the contributions has doubled or where and how Mr. Carey is able to provide this substantial assistance. When a plan relies on the contribution of a third party, the Debtor must provide competent evidence that the third party is pledging these funds in order to determine that the plan is feasible. The declaration as filed does not provide this assurance.

In his Supplemental Declaration Mr. Carey does not provide any economic specifics, but that he intends to fund the \$810.00 gift (over \$40,000.00) from both his income and his wife's income. Mr. Carey's wife does not provide her declaration, though it now appears that her income is part of the funding.

Debtor's Unreasonable Statement of Expenses

As to the Trustee's third objection, the court also find these expenses unreasonably low. The Debtor is proposing a budget that is nearly half of what the Internal Revenue Service proposes for a single-person household. The Debtor, not having filed a declaration, does not provide any explanation at how this dramatic reduction in expenses is possible. Absent explanation from the Debtor as to how he proposes to achieve this drastic decrease in expenses, 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).

Other than saying that the Debtor is happy with her "country lifestyle," Debtor offers no explanation as to how she can maintain at least

a subsistence standard of living for the five years of the Plan. The court takes judicial notice that even persons living in the country need: food, clothing, personal care products, insurance, transportation, health supplies, medical treatment, household goods, and home maintenance.

The Debtor's latest financial information purports to state her expenses to be:

Expense	February 12, 2016 Amended Schedule J; Dckt. 142	May 6, 2015 Amended Schedule J; Dckt. 57	Original Schedule J; Dckt. 19
Property Ins.	\$60	\$60	\$60
Home Maintenance	\$100	\$100	\$100
Electricity/Gas	\$165	\$165	\$165
Water, Sewer, Garbage	\$44	\$44	\$44
Phone, Internet, Cable	\$80	\$80	\$80
Food and Housekeeping Supplies	\$200	\$200	\$250
Clothing, Laundry	\$5	\$5	\$0
Personal Care Products	\$5	\$5	\$20
Medical, Dental	\$100	\$100	\$160
Transportation	\$130	\$180	\$0
Entertainment	\$7	\$7	\$0
Charitable	\$0	\$0	\$0
Health Ins	\$105	\$105	\$105
Total Expenses	\$1,001	\$1,051	\$984

What the Debtor has shown through the incarnations of Schedule J is that her expenses are not based on what her expenses are, but only what needs to be the bottom line number to show that she can "afford" to make the monthly mortgage payment.

The glaring deficiencies are for:

- A. Food - Debtor dropping from \$250.00 a month to \$200.00, without showing that such represents her real, three meals a day, food bill and housekeeping supplies expenses. If the court assumes only \$25.00 a month for housekeeping supplies, that would leave \$175.00 a month for food.

Assuming a thirty-day month and three meals a day, Debtor must pay for food for 90 meals. With \$175.00 a month for food, that allows for \$1.94 per meal. The Debtor makes no showing that she can properly provide for herself and put basic, low cost meals on the table for five years at \$1.94 per meal.

- B. Clothing/Laundry - Here, Debtor provides the court with no evidence of how she will cloth herself for five years, spending on average \$5.00 per month.
- C. Debtor does not explain her \$130.00 transportation expense. Debtor no owning a vehicle, it may be for taxis, Uber, or bus fare. However, the Debtor fails (or is unwilling) to disclose such information to the court.

From the Debtor's declaration it is clear that she has made the determination that this is her Plan and that is shall be confirmed. Debtor has drawn her conclusions and states them to the court. In substance, Debtor is withholding actual facts from the court, and instead is dictating the conclusions of law and findings of fact to the court.

This court has many "country folk" who seek relief in this court and successfully either reorganize or obtain a fresh start through a Chapter 7 discharge. Those "country folk" do not come to this court purporting to spend \$1.94 per meal for food and \$5 a month for clothing. Even someone living in the country needs more than that to scratch out even a basic survival lifestyle.

Inconsistent Statements in Plan

The Trustee's third and fourth objection also deal with the improper and incomplete form of the instant proposed plan. The plan, in Section 6, modified the plan form to explicitly and clearly state "Additional Provisions are appended to this plan." Dckt. 139. However, no such provisions are attached. The court nor any party in interest can determine the viability and feasibility of a plan when the plan, as filed, does not have all the terms.

The Debtor does address this in her Reply, seeking the court to allow this to be corrected as a clerical error in the order confirming.

Benefactor's Incorrect Premise

In his Supplemental Declaration, Tom Carey states under penalty of perjury his opinion that, "Some day, she [Debtor] will be gainfully employed and will no longer need my assistance." Declaration, p. 2:6.5-7.5; Dckt. 154. This statement conflicts with Debtor's repeated statements under penalty of perjury that she is "Retired/Disabled." Second Amended Schedule I, Dckt. 142 at 4; First Amended Schedule I, Dckt. 57 at 10; and Original Schedule I; Dckt.

19 at 18 (stating occupation as "Retired/Disabled RN," employer as "SSDI," and having been "employed" for 18 years).

It appears that Mr. Carey's statement that the Debtor will not need his assistance because "someday" she will be gainfully employed conflicts with the statements by Debtor under penalty of perjury that she is retired (age 59, Debtor's Declaration ¶ 6; Dckt. 152) and disabled.

Consideration of Additional Financial Information

On the Original Statement of Financial Affairs Debtor stated under penalty of perjury that she had no income in 2015, 2014, or 2013. Statement of Financial Affairs Questions 1 and 2, Dckt. 1; filed by Debtor in pro se. This was corrected in May 2016, with the assistance of counsel, in which Debtor reported the total gross income for each of the three years:

	2015 YTD of March 19, 2015 Filing	2014	2013
Statement of Financial Affairs Question 1	\$0	\$0	\$0
Statement of Financial Affairs Question 2	\$5,400	\$21,004	\$21,000
Total	\$5,400	\$21,004	\$21,000
Average Per Month (3 months)	\$1,800	n/a	n/a
Average Per Month (12 months)	n/a	\$1,750	\$1,750

Amended Statement of Financial Affairs, Question 1 and 2; Dckt. 57 at 17.

Based on this information, it appears that the Debtor's Annuity, SSI income, and the utility credit (as reported on the Amended Statement of Financial Affairs) average out to be income of \$1,800.00 a month.

In Debtor's latest Amended Schedule I (Dckt. 142 at 4-5), in which Debtor states that she is "Retired/Disabled," she states that she has SSI, Utilities Discount, and Worker's Compensation benefits totaling \$1,750 a month.

Buried in paragraph 17 of Debtor's late filed Declaration, she states under penalty of perjury that she now receives \$120 a month in food stamp benefits. Adding that to the \$1,750 stated by Debtor, she has \$1,870 a month in income.

Even adding in all of her benefits (in case Debtor was listing a food expense net of the food stamp benefits), the stated expenses do not make economic sense.

Debtor's Inability to Confirm a Plan

The Trustee's last objection is a summation of the concern the Trustee and the court has had with the instant case. In the year since the instant case has been filed, the Debtor has been unable to confirm a plan. The Debtor either does not properly provide sufficient explanation and evidence to support confirmation.

As the other three plans have failed, the fourth 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.

28. [12-37390-E-13](#) STACY MORRISON
PGM-1 Peter Macaluso

MOTION TO VACATE DISMISSAL OF
CASE
3-7-16 [[93](#)]

DEBTOR DISMISSED: 02/21/2016

Final Ruling: No appearance at the April 5, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 29, 2016. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

The Motion to Vacate is granted and the order dismissing the case (Dckt. 90) is vacated.

Stacy Morrison ("Debtor") filed the instant Motion to Vacate Dismissal on March 7, 2016. Dckt. 93.

The instant case was filed on September 27, 2012. Dckt. 1. A plan was confirmed on October 11, 2012, and an order confirming the plan was entered on December 6, 2012. Dckt. 10 and 20.

On January 19, 2016, the Chapter 13 Trustee filed a Motion to Dismiss the Case due to Debtor's delinquency in plan payments in the amount of \$9,090.00. Dckt. 84.

Debtor claims a payment was made in January 2016, but it was insufficient to cure the arrears. However, the Court notes Debtor failed to file a response to Trustee's Motion to Dismiss.

On February 17, 2016, a hearing on the Motion to Dismiss was held and the Motion was granted. Dckt. 88. The ruling was final, as the Debtor had filed no opposition.

On March 7 2016, Debtor filed this instant Motion to Vacate claiming the delinquency was caused by mistake and that she has the funds to bring the plan current.

Debtor claims bad advice from former counsel led her to believe a lump sum payment would "give [her] some relief for future monthly payments." Dckt. 95. Upon this advice, around July 2016, she made a payment of \$10,000.00 to Trustee believing she could forego monthly payments until January 2016.

Debtor has provided evidence of certified funds in the amount of \$12,180.00. Dckt. 96. This payment would bring Plan payments current. Debtor also maintains, if the instant motion is granted, she can continue to make plan payments on time, due to receiving a 4% raise.

The Debtor seeks to have the order dismissing the case vacated, per Rule 60(b), on the ground that the Debtor was delinquent due to being misinformed and any missed payment was inadvertent.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on March 10, 2016. Dckt. 99. The Trustee states if Debtor provides the certified funds of \$12,180.00 the Plan payments would be current.

The Trustee states, upon review, "Class 5 creditor is paid in full, there are no Class 2 creditors and Class 7 creditors are being paid at !00%." Dckt. 99. Since Debtor was misled by prior counsel and she can now bring the case current, the Trustee does not oppose the Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 Fed. Appx. 194, 196-197 (9th Cir. 2004); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 792 (B.A.P. 9th Cir. 2002).

The sole ground for the Motion to Dismiss was the Debtor's delinquency. As a Local Bankr. R. 9014-1(f)(1) motion, the Debtor and Debtor's counsel were required to oppose the Motion in writing 14-days prior to the hearing. Instead, Debtor filed no Opposition and let the court make a final ruling without any argument.

As stated by the Debtor and confirmed by the Trustee, the Debtor will be able to bring her plan current with the \$12,18.00 being held in certified funds. While the Debtor should have responded to Trustee's Motion to Dismiss, the curing of the delinquency and the misinformation she received from counsel provides justification under Fed. R. Civ. P. 60(b)(1) for mistake and inadvertence.

Additionally, the Debtor would be prejudiced by the dismissal standing because the Debtor has made over \$69,000.00 into plan payments already which would essentially be vitiated if the dismissal stood. The Debtor would have to start from square one if the Motion is not granted. The Debtor has acted

quickly in filing the instant Motion to Vacate. The Debtor quickly brought her plan current.

Therefore, in light of the foregoing, the Motion is granted and the order dismissing the case (Dckt. 90) is vacated.

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

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

The Motion to Vacate Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the order dismissing the case (Dckt. 90) is vacated.

29. 16-21392-E-13 SCOTT/PAULINE FERTEY
MET-1 Mary Ellen Terranella

MOTION TO EXTEND AUTOMATIC STAY
3-13-16 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2016. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Scott and Pauline Fertey ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 13-26355) was dismissed on March 7, 2016, after Debtor filed an ex parte motion requesting that the case be dismissed. See Order, Bankr. E.D. Cal. No. 13-26355, Dckt. 22, March 4, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtor had requested that the prior case be dismissed due to the Debtor falling behind in their mortgage payments. The Class 4 creditor and mortgage lender was initiating foreclosure. The Debtors are seeking to protect their home and have provided for their lender in Class 1 to cure the delinquency.

The Debtor states that last July, the Debtor unexpectedly lost their son which caused obvious devastation. Debtor Scott Fertey lost his job.

Now, the Debtor states that Debtor Pauline Fertey has been a working part-time job for almost a year and Debtor Scott Fertey found a new job in September, 2015. The Debtor states that they propose a plan that will cure their mortgage delinquency, pay off the remaining debt on a vehicle loan, a small secured tax lien, and the remaining balances on priority tax claims.

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

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

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

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

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of

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

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