UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 12, 2016 at 3:00 p.m.

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1. 15-29404-E-13 TAEVONA MONTGOMERY
RJ-3 Richard Jare

AMENDED MOTION TO SELL FREE AND CLEAR OF LIENS
3-22-16 [73]

Final Ruling: No appearance at the April 12, 2016 hearing is required.

The Debtor having filed a "Consent for Denial" for the pending Motion to Sell Free and Clear of Liens stating the proposed buyers are no longer purchasing the property, 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 Sell Free and Clear of Liens, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Sell Free and Clear of Liens**.

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

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

2. 14-29505-E-13 JOHN/CAROLIN FUNDERBURG MOTION TO INCUR DEBT
DJC-4 Diana Cavanaugh 3-15-16 [71]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

The motion seeks permission to purchase a used 2014 Chevrolet Cruze LTZ sed 4DR which the total purchase price is $18,8690.00, at an interest rate of 14.45% interest rate, with monthly payments of $309.87 for 72 months.

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 29, 2016. Dckt. 76. The Trustee states that he does not oppose the motion as to the vehicle type or price or the Debtor's need for the vehicle. Rather, the Trustee is uncertain whether the Debtor has shown the ability to make the payments for the vehicle at the same time as they continue plan payments.

The Debtor have failed to file a supplemental budget or how the Debtor has now more income in order to make the plan payments and vehicle payments. The Trustee notes that at the time the original budget was filed on September 23, 2014, the Debtor barely had enough income to make the proposed plan payments and did not have any savings. Dckt. 1. However, the Debtor is now asserting that they have $4,000.00 in savings.

Additionally, the Trustee is uncertain whether the financing term of 14.45% interest proposed is reasonable. The Trustee asserts that the Debtor's declaration does not provide detail as to what efforts the Debtor made to negotiate a lower interest rate.

Review of Original and Amended Schedules I and J

While not filed in connection with the present Motion, Debtor filed Amended Schedules I and J on March 22, 2016; Dckt. 75. An amended schedule corrects "errors" in the Original Schedules in I and J, with such changes being effective since the filing of the bankruptcy case. This is contrasted with "supplemental schedules I and J," which update the information from a post-petition date for post-petition changes:

The Original and Amended Schedules to correct errors in the Original Schedules disclose the following information:

	Original Schedule I, Dckt. 1	Amended Corrected Schedule I, Dckt. 75	Corrected Error Increase/(Decrease) in Income Information
Debtor Gross Income, Debtor	$11,999.00	$12,347.36	$348.36
Debtor SSI, Medicare	($3,375.25)	($3,472.07)	($96.82)
Debtor Mandatory Retirement Contributions	($677.56)	($689.28)	($11.72)
Debtor Voluntary Retirement Plan Contributions	($97.44)	($99.34)	($1.90)
Debtor Insurance Withholding	($2,044.25)	($1,927.40)	$116.85
Debtor Union Dues	($43.33)		$43.33
Debtor Charitable	($4.33)		$4.33
Co-Debtor Gross Income, Debtor	$6,170.69	$5,858.46	($312.23)
Debtor SSI, Medicare	($1,469.93)	($1,277.46)	$192.47
Debtor Voluntary Retirement Plan Contributions	($225.00)	($225.00)	$0.00

Total Monthly Net Income Original Schedule I	$10,232.60		
	Total Monthly Income Amended Schedule I	$10,515.27	
		Increase of Income	$282.67

Amended Schedule I shows a modest increase in net income as of the commencement of this case.

The court has also compared the Original Schedule J and Amended Schedule J (excluding the proposed expense for the vehicle purchase, since such expense did not exist as of the effective date of Amended Schedule J - the commencement of this bankruptcy case). The expense information is compared in the following chart:

	Original Schedule J, Dckt. 1	Amended Corrected Schedule J, Dckt. 75	Corrected Error (Increase)/ Decrease in Income Information
Home Maintenance	($150.00)	($150.00)	$0.00
Electricity, Nat. Gas	($231.12)	($231.12)	$0.00
Water, Sewer, Garbage	($292.71)	($292.71)	$0.00
Telephone, Cable	($312.00)	($312.00)	$0.00
Cell Phones	($302.00)	($302.00)	$0.00
Alarm	($53.02)	($53.02)	$0.00
Food and Housekeeping	($1,200.00)	($1,400.00)	($200.00)
Childcare, Children’s Education	($600.00)	$0.00	$600.00
Clothing, Laundry	($250.00)	($250.00)	$0.00
Personal Care Products	($150.00)	($150.00)	$0.00
Medical, Dental	($350.00)	($350.00)	$0.00

Transportation	($510.00)	($599.00)	($89.00)
Entertainment, Clubs	($7.99)	($200.00)	($192.01)
Charitable Contributions	($400.00)	($400.00)	$0.00
Life Ins	($98.43)	($62.13)	$36.30
Vehicle Ins	($136.74)	($136.74)	$0.00
Gym	($188.49)	($88.50)	$99.99
Total Original Schedule J Expenses	($5,232.50)		
	Total Amended Schedule J Expenses	($4,977.22)	
		(Increase)/ Decrease in Corrected Expenses	$255.28

A cursory comparison of the two Schedules would appear to show only a small correction, there being an additional ($200) in expenses monthly since the commencement of this case. However, a look at the specific line items raises some concerning issues for the court.

The Plan in this case was confirmed without hearing before the court. The Chapter 13 Trustee nor any creditor filing an objection to confirmation, there was not a judicial review of the Debtor's finances.

Debtor has a family of four persons, the two Debtors and two minor children. When confirmed, Debtor stated that the reasonable and necessary monthly expenses for food and housekeeping supplies was $1,200 a month. While bankruptcy is not intended to force a debtor's family into a subsistence level of existence, $1,200 a month for food for a family of two adults and two children is significantly greater than what is generally presented to the court. Now, Debtor state that the "correct" number is even higher, $1,400.00 a month. At $1,400 a month, Debtor represents that the reasonable and necessary expense for food and basic housekeeping supplies is $350 a week.

For the two adult Debtors, they have a $302.00 a month cell phone bill. As of the commencement of this case, Debtor's children were 8 and 14, so it is possible that there was an additional cell phone for the teenage child. Compared to other cell phone expenses for other debtors, a $302 a month family cell phone expense appears to be higher than what is usually presented to the court.

Another interesting expense is $250.00 a month for clothing and laundry.

Over twelve months, Debtor states that it is reasonable and necessary for Debtor to spend $3,000.00 a year on clothing.

Debtor also asserts that the reasonable and necessary transportation expense is $600 a month, which for gas, maintenance, and registration is $7,200.00 a year.

Debtor continues to state that Debtor was, and has continued, to make $400.00 a month charitable contributions, which total $4,800.00 a year. Such is their choice, so long as they have actually made $4,800.00 a year in such contributions.

Finally, which Debtor stated that there was a gym membership of $188.49 a month, the Amended Schedule J now states is was actually only $88.50 a month. Thus, this expense has been overstated by $1,200.00 per year.

Review of Chapter 13 Plan

Debtor's Chapter 13 Plan requires a $5,000.00 a month plan payment. Dckt. 5. This Plan payment is used to pay:

a. Monthly Current Mortgage Payment.....$3,224.28

b. Monthly Mortgage Cure Payment ($11,200 arrearage)...$ 250.00

c. Debt Secured By Two Vehicles Payment.....$1,885.00

With respect to this debt, it is secured by the vehicles, the total debt was $11,900.00, repaid at 4.50% interest, at $1,885.00. Though this payment scheme, Debtor quickly repaid this debt within the first seven months of the plan.

Next, Debtor repays $33,853.95 of nondischargeable federal and state tax debts.

Finally, Debtor will make a 31% dividend on general unsecured claims totaling $247,058.00. While a 31% dividend is significantly larger than the vast majority of Chapter 13 plans, it is also true that Debtor having monthly gross income of $18,205.00 is even more extraordinary.

Ruling

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the transaction is not best interest of the Debtor. The loan calls for a substantial interest charge – 14.45%. While alone this interest rate may

not be unconscionable, the higher than average interest rate coupled with the Debtor's failure to provide explanation as to how the Debtor had $4,000.00 in savings that was not reported at the time of filing raises concerns. The court, as well as the Trustee, are concerned that the Debtor may not be providing accurate and truthful testimony as to the Debtor's actual assets or that the Debtor has failed to report additional income. While the Debtor does state in the declaration concerning the number of dealerships and vehicles tried, the Debtor does not provide any testimony as to how the Debtor attempted to negotiate down a better interest rate.

Reviewing the Schedules, Original and "Amended," some concerning financial issues are raised. As stated above, there is no showing how Debtor could have "saved" $4,000.00 for the down payment. Presumably, it could have occurred only if Debtor's expenses are not as stated under penalty of perjury.

On Amended Schedule J, some expenses disappear altogether, such as $600.00 a month for childcare – which is $7,200.00 of a purported expense which has not existed.

Further, while there is an significant dividend to creditors holding general unsecured claims, it appears that filing of bankruptcy has done little to change the finances of Debtor. If believed, Debtor has extraordinary high food, clothing, and transportation expenses. Alternatively, Debtor misstates the expenses, pocketing the overstated expenses rather than funding the plan.

Therefore, in light of the high interest rate, the Debtor failing to provide testimony as to where the $4,000.00 in savings came from, failing to provide evidence of the Debtor's ability to pay, and serious issues as to the accuracy of the Original and Amended Schedules I and J, the Motion is denied without prejudice.

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

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

3. 11-45806-E-13 TONIA HAILEY
MC-5 Muoi Chea

CONTINUED MOTION TO MODIFY PLAN
1-25-16 [87]

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 January 25, 2016. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

Tonia Hailey ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 25, 2016. Dckt. 87. The Debtor is proposing to reduce her plan term from 60 months to 50 months.

The Debtor states that the only creditor that was to be paid through the Debtor's prior confirmed plan as a Class 2 creditor was Nissan Motors Acceptance Corp for her 2005 Nissan Altima, with Class 7 general unsecured creditors receiving a 0% dividend. The Debtor states that the Debtor totaled the 2005 Nissan Ultima on November 30, 2015. The Debtor's insurance company paid off the loan balance on the vehicle to Nissan Motors Acceptance Corp.

Furthermore, the Debtor states that her income has fallen since the time of filing and is no longer working overtime. The Debtor alleges that her expenses are below the Internal Revenue Service standards. The Debtor also

states that she is wishing to reduce her plan term length in order to better negotiate lower interest rates for a replacement vehicle.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 16, 2016. Dckt. 93. The Trustee objects on the ground that the Debtor's modified plan is attempting to reduce the plan term from 60 months to 50 with a total paid into the plan of $12,180.00 through December 25, 2015.

The Trustee notes that the Debtor's Supplemental Schedules I and J reflect a decrease in income, with a monthly net income of <-$2.67>.

The Trustee states that the proposed plan reclassifies Nissan Motor Acceptance Corp from Class 2 to Class 3 due to an accident which rendered the vehicle a total loss.

The Debtor's Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income filed at the time of filing indicated that the Debtor was an above median income debtor with an applicable plan period of 5 years.

The Trustee objects to the reduced plan term pursuant to 11 U.S.C. § 1325(d).

DEBTOR'S RESPONSE

The Debtor filed a response to Trustee's Opposition on February 23, 2016. The Debtor asserts that 11 U.S.C. § 1329 does not incorporate 11 U.S.C. § 1325(b)'s disposable income test for modified plans. Rather, the Debtor asserts that, given the facts stated in the Motion, the Debtor has made a sufficient showing that the Debtor's income has fallen substantially since the time of the initial filing and the accident which totaled Debtor's vehicle resulted in the only remaining secured creditor (Nissan) to be paid through insurance.

MARCH 1, 2016 HEARING

At the hearing, the court continued the hearing on the Motion to 3:00 p.m. on April 12, 2016. Dckt. 100. The Chapter 13 Trustee was ordered to file and serve Supplemental Pleadings on or before March 18, 2016, and Debtor shall file and serve a Reply, if any, on or before March 25, 2016.

TRUSTEE'S SUPPLEMENTAL OPPOSITION

The Trustee filed a supplemental opposition on March 17, 2016. Dckt. 102. The Trustee asserts that the Debtor had previously admitted that the applicable commitment period is five years, Dckt. 1, but is now attempting to lessen that applicable commitment period. The Trustee asserts that the court in *In re Flores* determined that modification of a plan is only permited if the proposed plan is at least equal to the applicable time period. Further, the Trustee asserts that the court in In re Fridley supports this proposition. The Trustee concludes by stating that since In re Sunahara which the Debtor relies upon, 11 U.S.C. § 1329 has been modificed to include the explicite reference to 11 U.S.C. § 1325(b)(1)(B).

DEBTOR'S RESPONSE

The Debtor filed a response on March 24, 2016. Dckt. 104. The Debtor asserts that courts in the Ninth Circuit have been able to interpret In re Flores to not conflict with In re Sunahara. The Debtor states that the proposition cited by the Trustee that a minimum duration period is necessary (In re Fridley) was determined to be dicta. In re Roe, 511 B.R. 137, 139 (Bankr. D. Haw. 2014).

DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Specifically, 11 U.S.C. § 1329(b)(1) states:

> Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.

As such, § 1329 does not specifically incorporate 11 U.S.C. § 1325(b)'s projected income test to determine the length of the plan. This is further highlighted by the fact that 11 U.S.C. § 1325(a) which is incorporated into § 1329, states: "(a) Except as provided in subsection (b), the court shall confirm a plan if –." See In re Mast, 541 B.R. 487, 490-91 (Bankr. S.D. Cal. 2015).

The Ninth Circuit Bankruptcy Appellate Panel has discussed specifically the fact that 11 U.S.C. § 1329 modification does not incorporate the projected income test to determine the plan period length. The court in *Sunahara v. Burchard* (*In re Sunahara*) stated, "[s]imply put, the plain language of § 1329(b) does not mandate satisfaction of the disposable income test of 1325(b)(1)(B) with respect to modified plans." *In re Sunahara*, 326 B.R. 768, 781 (B.A.P. 9th Cir. 2005). However, the court did note that:

> In determining whether to authorize a modification that reduces a plan term to less than 36 months without full payment of allowed claims, the bankruptcy court should carefully consider whether the modification has been proposed in good faith. See § 1325(a)(3). Such a determination necessarily requires an assessment of a debtor's overall financial condition including, without limitation, the debtor's current disposable income, the likelihood that the debtor's disposable income will significantly increase due to increased income or decreased expenses over the remaining term of the original plan, the proximity of time between confirmation of the original plan and the filing of the modification motion, and the risk of default over the remaining term of the plan versus the certainty of immediate payment to creditors.

Id. at 781-82. The court's finding in *In re Sunahara* has been adopted by other courts, supporting the proposition that if a debtor's income drops below the current monthly income as determined at the time of filing, the debtor's modification under 11 U.S.C. § 1329 is not constrained by the applicable commitment period dictated by 11 U.S.C. § 1325(b)(4). *See In re Barnes*, 506 B.R. 777 (Bankr. E.D. Wis. 2014); *In re Davis*, 439 B.R. 863 (Bankr. N.D. Ill.

2010); *In re McCully*, 398 B.R. 590 (Bankr. N.D. Ohio 2008).

In considering this issue, which not constrained by the applicable commitment period, the court does consider whether it would be proper to shorten the period, or whether the reduced income merely requires a reduction in the monthly plan payment.

Therefore, in analyzing whether a proposed plan satisfies 11 U.S.C. § 1329 for purposes of modification, the Debtor's income and finances are not taken completely out of the equation, but instead are considered in context of the other requirements of 11 U.S.C. § 1329(a), specifically 11 U.S.C. § 1325(a)(3).

Consideration of Debtor's Finances

Here, the Debtor's only secured claim to be paid through the plan, Nissan Motors Acceptance Corp. However, as evidenced by the Debtor, the vehicle that was securing the secured creditor's claim has been totaled and been paid off through the vehicle insurance. The confirmed plan had already proposed a 0% dividend to unsecured Class 7 claimants.

However, merely because the secured claim which was to be reamortized over the five year applicable commitment period no longer needs to be paid through the plan is not the deciding issue. This bankruptcy case was filed on October 30, 2011. The confirmed plan in this case provided generally as follows:

A. Monthly Plan Payment.....$ 330

B. Term of the Plan.....60 Months

1. Total Plan Payments.....$19,800

C. Payment to Debtor's Attorney.....($ 2,000)

D. Chapter 13 Trustee Fees (Est. 7%).....($ 1,386)

E. Class 1 Secured Claims.....None

F. Class 2 Secured Claims

1. Nissan (at 10% interest).....($11,040)

G. Class 3 Surrender.....None

H. Class 4 Direct Payments.....Two Claims

I. Class 5 Priority Unsecured.....None

J. Class 6 Special Unsecured.....None

K. Class 7 General Unsecured - 0.00% Promised Dividend

1. Projected $122,253.52 in claims

2. Balance of Plan Monies Paid Class 7.....($5,347)

3. Estimated Dividend.....4.4%

Chapter 13 Plan and Confirmation Order, Dckts. 5 and 49.

In 2014 the Original Confirmed Plan was modified, with the confirmation order filed on January 28, 2014. Order, Dckt. 85. The modification was requested because Debtor lost her job and had to reduce her plan payment to $170.00 in order to maintain her car payments through the plan.

By January 2016, the Debtor is back seeking a second modification of the Plan. Motion Dckt. 87. This case is now about fifty-three months into a plan. The court compares the Debtor's stated current finances with the original finances upon which the Original Chapter 13 Plan was confirmed.

	Updated Current Income, Exhibit A, Dckt. 90	**Original Schedule I, Dckt. 1**
Gross Income	$3,702.40	$5,283.33
Tax, Medicare, Social Security	($686.14)	($1,126.67)
Insurance	($199.42)	($175.00)
401K	$0.00	($133.16)
Take-Home Pay	$2,816.84	$3,848.50
	Updated Current Expenses, Exhibit B, Dckt. 90	
Mortgage	($1,707.44)	($1,406.54)
Home Maintenance	$0.00	$0.00
Electricity, Heat	($250.00)	($300.00)
Water, Sewer, Garbage	($132.00)	($98.00)
Phone, Cable	($210.00)	($180.00)
Additional For Internet and Cable		($110.00)
Food, Housekeeping	($254.56)	($550.16)
Clothing, Laundry	$0.00	($90.00)

Personal Care Products	($80.00)	No Line Item
Medical, Dental	($150.00)	($150.00)
Transportation	($150.00)	($250.00)
Life Insurance	($48.00)	($48.00)
Vehicle Insurance	$0.00	($100.00)
Windows		($50.00)
Total Expenses	($2,982.00)	($3,332.70)

In the past fifty-three months, Debtor has suffered a lower of income, with no projected increase on the horizon during what will be the last seven months of the maximum sixty-month for a Chapter 13 plan. There is no projection by the Trustee of what would be the projected disposable income for the additional seven months. From the above chart, it appears that such amount could be $1.00.

While the projected income and the commitment period may be a consideration in modified plans, it does not necessarily mean a proposed modified plan should be denied confirmation due to a reduced plan term.

The Trustee's argument is based on *Flores* for the proposition that a modification should not be permitted to reduce the plan commitment period. However, while "Flores underscores the importance of allowing creditors to seek higher plan payments, the court must not have meant to preclude debtors from proposing smaller or faster plan payments, because section 1329 permits those options also." *In re Roe*, 511 B.R. 137, 138 (Bankr. D. Haw. 2014).

The Trustee directs the court to consider the 2005 amendment to 11 U.S.C. § 1329 which added paragraph (c), which states,

> "(c) A plan modified under this section may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time."

While it is true that this paragraph makes reference to the applicable commitment period, it does so by saying that for purposes of modifying a confirmed plan, the modified plan may not provide for payments for ***longer*** than the original applicable commitment period, unless the court approves such ***longer*** period, which cannot exceed the five year maximum. Congress, in carefully drafting the language in this paragraph, did not say that the court cannot modify a plan to a period of time ***shorter than*** the applicable commitment period for confirming the original plan. If Congress sought to set a ***not***

shorter than period of time for a modified plan, it would have so expressly stated.

This case demonstrates why Congress has not imported a mandatory applicable commitment period into the 11 U.S.C. § 1329 plan modification process. There are many financial events which may occur over the sixty months of a plan which make the retrospective six month "current monthly income" calculation irrelevant fifty-three months down the lien. Instead, Congress left vested in the bankruptcy judge's power to review the true economic of the case, balance the equities, and determine what plan period is consistent with the Bankruptcy Code, the Debtor's good faith prosecution of the case and proposing the modified plan, and of meaningful economic rehabilitation.

As the court discussed *supra*, the Debtor has provided sufficient evidence that there have been substantial changes in both income and expenses and also the structure of the plan, namely the pay off the secured creditor from insurance proceeds. There is no meaningful time for Debtor to perform the plan. There are no meaningful monies which the Trustee asserts can be paid to creditors.

The court here is satisfied that the justification for the reduction in plan term is proposed in good faith and that the plan satisfies the necessary Bankruptcy Code provisions.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 25, 2016 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.

4. 13-23114-E-13 PAMELA WILLIS
JMC-3 Joseph Canning

MOTION TO AVOID LIEN OF CAPITAL ONE BANK, N.A.
3-7-16 [44]

Final Ruling: No appearance at the April 12, 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 March 7, 2016. By the court's calculation, 36 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 Capital One Bank, N.A. ("Creditor") against property of Pamela Willis ("Debtor") commonly known as 201 Whalebone Court, Vallejo, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,572.02. An abstract of judgment was recorded with **Solano** County on February 6, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $82,365.00 as of the date of the petition. The unavoidable consensual liens total $146,895.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 730.140(b)(1) in the amount of $1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Capital One Bank, N.A., California Superior Court for Solano County Case No. FMC131661, recorded on February 6, 2013, Document No. 201300013903 with the Solano County Recorder, against the real property commonly known as 201 Whalebone Court, Vallejo, 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.

5. 13-30624-E-13 NAOMI BROWN **MOTION TO BORROW**
PGM-1 Peter Macaluso **3-15-16 [27]**

Final Ruling: No appearance at the April 12, 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 March 15, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The motion seeks permission to purchase the real property commonly known as 8478 Belcasetel Way, Fair Oaks, California, which the total purchase price is $424,297.00, with monthly payments of $2,816.00. The Debtor proposes to use funds from her retirement account in the amount of $15,273.00 to put toward the down payment on the home.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on March 29, 2016.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts

and circumstances of this case, is reasonable. The Debtor provides a proposed budget in the form of supplemental Schedules I and J. Dckt. 30, Exhibit C. The budget proposed appears to be viable. The plan provides for 100% dividend to unsecured creditors.

There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and Naomi Brown ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit C, Dckt. 30.

6. 16-21528-E-13 MS-1 BORIS/VALENTINA KARAMALAK Mark Shmorgan MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 3-14-16 [10]

Final Ruling: No appearance at the April 12, 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, creditor, parties requesting special notice, and Office of the United States Trustee on March 14, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Boris and Valentina Karamalak ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6863 Donerail Drive, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $193,071.00 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 $204,986.00. Creditor's second deed of trust secures a claim with a balance of approximately $24,689.14. 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 Boris and Valentina Karamalak ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 6863 Donerail Drive, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $193,071.00 and is encumbered by senior lien securing claims in the amount of $204,986.00, which exceeds the value of the Property which is subject to Creditor's lien.

7. 14-26329-E-13 HATTIE FERRETTI
LBG-101 Lucas Garcia

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LUKE GARCIA FOR LUCAS GARCIA, DEBTOR'S ATTORNEY
3-14-16 [63]

ATTENDANCE OF LUCAS GARCIA, COUNSEL FOR DEBTOR REQUIRED FOR APRIL 12, 2016 HEARING

TELEPHONIC APPEARANCE PERMITTED

Tentative Ruling: 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).

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 15, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Hattie Lucille Ferretti, the Attorney ("Applicant") for Hattie Lucille Ferretti, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

FN.1. While not explicitly stated, the Applicant does cite to 11 U.S.C. § 330, which is the statute concerning final approval of fees. The court has flagged for the Applicant in the past the necessity of properly indicating whether the Applicant is seeking authority for fees on an interim bases under § 331 or final bases under § 330. Here, the Applicant has cited 11 U.S.C. § 330. Therefore, the court construes this request as a final request.

The period for which the fees are requested is for the period May 13, 2014 through February 16, 2016. Applicant requests fees in the amount of $9,652.50 and costs in the amount of $360.00.

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 preparation, Meeting of Creditors, responding to the Motion to Dismiss, filing Motion to Value, and provided a minor modification in order to prevent dismissal. 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.

It should be noted that in preparing the task billing analysis counsel took the extra step to color code the various task areas. Anything which makes it easier for the court to identify the separate task areas, the easier it is for the court to understand the applicant’s analysis of why the requested fees are reasonable.

General Case Administration: Applicant spent 13.3 hours in this category. Applicant assisted Client with preparing the necessary paperwork for

the petition, meeting with Client to prepare and review documents, reviewed filed claims, and reviewing annual taxes and income to determine if any changes in plan needed to be made.

Meeting of Creditors: Applicant spent 7.3 hours in this category. Applicant helped prepare and send necessary documents under § 521, attend the Meeting of Creditors, and then prepare followup paperwork, including the declaration of caregiver.

Motions to Dismiss: Applicant spent 4 hours in this category. Applicant reviewed the Motion to Dismiss, connected with the Social Security Administrator, respond and file an opposition to the Motion to Dismiss, communicate with the Trustee regarding withdrawing a Motion to Dismiss.

Modification to Plan: Applicant spent 3.4 hours in this category. Applicant reviewed a list from the Trustee with issues in the case to prevent dismissal, discussed with the Client the options of either a stipulated modification or a complete modification, contacted the Trustee in order to prepare stipulation, and finalized a stipulation and order.

Motion for Fees: Applicant spent 2.0 hours in this category. Applicant prepared the instant Motion.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Lucas Garcia, Esq.	33	$325.00	$10,725.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$9,652.50 FN.1.

FN.1. The Applicant voluntarily reduced the fee request by 3.3 hours, particularly in the initial client interview and preparation of the instant Motion.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $360.00 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost
Filing Fee	$310.00	$310.00
Mailing Costs	$50.00	$50.00
Total Costs Requested in Application		$360.00

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. First and Final Fees in the amount of $9,652.50 pursuant to 11 U.S.C. § 330 and authorized to apply the $1,600.00 retainer held in trust by the Applicant to the fees and authorized to be paid by the Trustee from the available funds of the Plan Funds the remaining $8,052.50 in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Costs and Expenses

The First and Final Costs in the amount of $360.00 are approved pursuant to 11 U.S.C. § 330 and authorized to apply the $1,600.00 retainer held in trust by the Applicant to the fees and authorized to be paid by the Trustee from the available funds of the Plan Funds the remaining $8,052.50 in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $9,652.50
Costs and Expenses $360.00

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

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

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

The Motion for Allowance of Fees and Expenses filed by Lucas Garcia("Applicant"), Attorney for 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 Lucas Garcia is allowed the following fees and expenses as a professional of the Estate:

Lucas Garcia, Professional Employed by Chapter 13 Debtor

Fees in the amount of $9,652.50
Expenses in the amount of $360.00,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to apply the $1,600.00 retainer held in trust by the Applicant to the fees and authorized to be paid by the Trustee from the available funds of the Plan Funds the remaining $8,052.50 in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

8. 15-27236-E-13 JAMES/KARI BIRDSEYE MOTION TO CONFIRM PLAN
RHM-2 Robert McConnell 2-25-16 [59]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Confirm the Amended Plan to 3:00 p.m. on June 14, 2016. The Debtor shall file and serve supplemental Schedules I and J on or before May 17, 2016. Any replies or oppositions shall be filed on or before May 31, 2016.

James and Kari Birdseye ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 25, 2016. Dckt. 59.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 22, 2016. Dckt. 65. The Trustee opposes confirmation on the grounds that they do not have a current budget. The Debtor's declaration states that Debtor Kari Birdseye obtained a new employment position with Wildaid, Inc. And Debtor James Birdseye income from Media General is subject

to a variable due to being on call for hours worked and his employment from New York Life may expire March 31, 2016.

Schedule J currently lists the Debtor's net income in the amount of $2,950.00. The most recent Schedule J was filed on September 15, 2015. Dckt. 1, pg. 31.

The Trustee indicates that he was informed that Debtor James Birdseye received an oral offer of full time employment from Media General as a contract employee with an anticipated income of $82,000.00.

The Debtor's attorney provided the Trustee with an earning statement for Debtor Kari Birdseye from Wildaid Inc. Her bi-weekly gross regular pay for pay period beginning February 16, 2016 and ending February 29, 2016 was $3,958.33, or approximately $8,589.57 per month. Her net income as listed on the check was $2,715.00 or $5,891.55 monthly.

The Trustee asserts that based on his calculation, ans the possible addition of $82,000.00 per annum it appears the Debtor's current combined net monthly income is $7,723.35. Currently, it appears the Debtor's monthly net income is approximately $5,395.50.

DISCUSSION

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

The Trustee's objection is well-taken. The last filed budget by the Debtor was on September 15, 2015, at the time the petition was filed. The Debtor has since indicated to the Trustee that both Debtors have had changes in employment, most likely resulting in an increased income. The Debtor has submitted to the evidence pay stubs to evidence this change in income. Without the Debtor having submitted updated, supplemental schedules, the court nor any other party in interest can determine the viability or feasibility of the plan. This is reason to deny confirmation. See 11 U.S.C. § 1325(a)(3).

However, the Trustee states that the Debtor may need a 60 day continuance to allow the Debtors enough time to file supplemental Schedules I and J.

In light of the Trustee's recommendation and good cause appearing, the court continues the instant Motion to 3:00 p.m. on June 14, 2016. The Debtor shall file and serve supplemental Schedules I and J on or before May 17, 2016. Any replies or oppositions shall be filed on or before May 31, 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 Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is continued to 3:00 p.m. on June 14, 2016. The Debtor shall file and serve supplemental Schedules I and J on or before May 17, 2016. Any replies or oppositions shall be filed on or before May 31, 2016.

9. 16-20336-E-13 LETITIA MCCOLLOM
DPC-1 Bruce Dwiggins

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-14-16 [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, Debtor's Attorney on March 14, 2016. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor's plan is not the Debtor's best efforts. The Debtor is above median income. The Debtor's Form 122C-2 shows disposable income of <-$22.08>. The Trustee asserts that the Debtor's plan does not propose to pay in all disposable income based on certain expenses ending prior to the end of the 60 month plan.

    a. On Schedule J, the Debtor deducts $700.00 for non-filing spouse's credit cards. However, the Debtor only proposes to pay $300.00 per month paying 0% dividend to general unsecured while her non-filing spouse pays his credit card outside the plan. The Debtor has not indicated why this discrimination is proper. The plan fails to provide a step up once the debt is paid off, if it is proper at all.

    b. Debtor deducts on Schedule J $527.00 and $418.00 per month for car payments. Debtor fails to provide dates of when these debts were incurred nor does the plan provide for an increase upon pay off.

    c. Debtor's non-filing spouse has a monthly deduction of $924.57 on Schedule I for a domestic support obligation. At the Meeting of Creditors, the Debtor stated that the obligation will end in 2-3 years. The Debtor's plan fails to propose an increase in plan payments at the time the support obligation ends.

    d. The Trustee reports that both the Debtor and Debtor's non-filing spouse failed to report many deduction and that the amount of tax withheld from each party's income is inaccurately reported. The Debtor's, who works for Walmart, deductions average approximately $200.00 in tax withholdings, $89.00 in life insurance, $78.00 in 401k contribution, and $368.00 in health insurance per month. The paystub also reveals that the Debtor is claiming 12 exemptions.

        Debtor's non-filing spouse works for CPC Special Logistics West, LLC. His approximate tax withholding averages $1,801.00 per month. He contributes $215.00 per month toward 401k and his spousal support of $924.57 per month.

2. The Debtor's plan fails to provide for the secured claims of Ford Credit, JP Morgan Chase Bank, and Siskiyou Credit Union listed on Schedule D.

3. The Debtor's plan may fail the Chapter 7 liquidation analysis. Debtor fails to report interest in life insurance policies on

Schedule B. Debtor's and her non-filing spouse's pay stubs reveal that both parties have deductions for life insurance.

The Trustee's objections are well-taken.

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.

The Debtor has admitted that there are certain expenses that will either be completed prior to the end of the plan term or be satisfied prior to the plan ending. As such, the Debtor has specific knowledge of certain expenses that have a specific end date. As such, the plan should provide for the step up in payments for when these expenses extinguish and the Debtor's disposable income increases. Therefore, the plan does not provide for all of the Debtor's disposable income and cannot be confirmed.

The Trustee next alleges that the plan is not feasible, *See* 11 U.S.C. § 1325(a)(6), and violates 11 U.S.C. § 1322(b)(2) because it contains no provision for payment of the three secured claims that are listed on Schedule D.

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

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

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

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

(3) surrender the collateral for the claim to the secured creditor, 11 U.S.C. § 1325(a)(5)(C).

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

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

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

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 the Debtor fails to report the life insurance policies held by both the Debtor and Debtor's non-filing spouse. The pay stubs provided to the Trustee indicates the existence of these policies as well as the continuing contribution. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable, as there appears to be additional assets.

Additional Plan Issues

The proposed Chapter 13 Plan provides for Debtor to fund it with only $300.00 a month. This is what is left over from the Debtor's and non-debtor spouse's $8,765.16 gross income. This indicates that the reasonable and necessary withholding and expenses consume 97% of the Debtor's and non-debtor's spouses gross income of $8,765.16 – leaving only 3% as Debtor's calculation of the projected disposable income.

For the first fourteen months of the plan, the $300 payment only provides to pay the Chapter 13 Trustee's fees and Debtor's counsel's fees. Then there will be $2,641.00 of nondischargeable taxes paid.

Debtor is unwilling to state a promised divided for general unsecured claims, electing to just say for the Class 7 claims that it will be no less than a 0.00% dividend. Clearly, with a 60 month plan, there will be some dividend. However, Debtor refuses to make any honest, truthful statement for this dividend. This is no proposing or prosecuting a plan in good faith.

The Trustee's objections and the asserted non- and inaccurate disclosures indicate conduct which is not in good faith – from the filing of this case, through its prosecution, and now to the proposing of the plan. 11 U.S.C. § 1325(a)(3) requires that the plan was proposed in good faith and 11 U.S.C. § 1325(a)(7) requires that the case was commenced in good faith, each as elements required for confirmation. In addition to dooming this plan,

Debtor’s conduct may well render plan unconfirmable in this case, or possibly any bankruptcy case commenced by Debtor.

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.

10. 16-20743-E-13 ANNA PETERSON
RWH-1 Ronald Holland

CONTINUED MOTION TO EXTEND AUTOMATIC STAY
2-16-16 [9]

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 - Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 16, 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.

The Motion to Extend the Automatic Stay is granted.

Anna Peterson ("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. 15-20149) was dismissed on January 22, 2016, after Debtor failed to make plan payments and failed to propose a modified plan after the denial of the Debtor's previous plan. *See* Order, Bankr. E.D. Cal. No. 15-20149, Dckt. 129, January 22, 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.

The court notes that the Debtor filed a non-opposition to the Motion to Dismiss in the prior case.

OPPOSITION OF CREDITOR

Debtor's ex-husband appeared at the hearing and stated his opposition to the Motion. This creditor raised sufficient issues for the court to set a briefing schedule to allow for the filing of opposition.

MARCH 1, 2016 HEARING

At the hearing, the court issued the following order:

> **IT IS ORDERED** that the Motion is granted, on an interim basis through and including April 30, 2016, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, subject to being terminated or extended by further order of the court.
>
> **IT IS FURTHER ORDERED** that the hearing on the Motion to Extend the Automatic Stay is continued to 3:00 p.m. on April 12, 2016 for final hearing. Oppositions to the Motion shall be filed and served on or before March 18, 2016, and Replies, if any, filed and served on or before March 25, 2016.

Dckt. 20.

CREDITOR'S OPPOSITION

Kevin Thompson ("Creditor"), the Debtor's ex-husband, filed an opposition to the instant Motion on March 17, 2016. Dckt. 23. The Creditor argues that the Creditor has been awarded child support and reimbursement of a child custody evaluation and child support arrears, from Debtor, in a state court action related to the care and custody of that minor child. The Creditor asserts that the instant case was filed to delay payment of child support and child support arrears.

The Creditor asserts that on December 4, 2015, Debtor was allegedly found guilty of contempt for failing to pay her court ordered obligations for child support arrears and reimbursement for the custody evaluation and was placed on probation. The Creditor asserts that the Debtor was ordered to pay $100.00 per month to the Creditor for ½ share of the court ordered evaluation expense, to pay $250.00 for court reporter fees, and to pay $504.00 per month in ongoing child support and $100.00 per month toward her arrearage.

The Creditor asserts that the Debtor filed the first bankruptcy case in order to prevent the collection of the ordered payments. The Creditor asserts that the Debtor waited until December 2015 for her first bankruptcy case being dismissed in order for her probation to end. The Creditor states that the Debtor then bought a new car and filed the instant case on February 10, 2016.

In the previous case, the Creditor states that the Debtor unsuccessfully objected to the proof of claim filed by Place County Child Support. Case No. 2015-20149, Dckt. 120.

The Creditor argues that in the Debtor's declaration, the Debtor stated that there were no changes in her support obligations. The Creditor asserts that is incorrect and the Debtor's obligation is $504.00 a month.

Debtor's proposed plan proposes a monthly payment of $216.00 per month for 60 months, with full payment of the $8,975.00 claim to Place County Child Support and 0% to unsecured creditors. Dckt. 5.

The Creditor argues that the instant case was filed to avoid paying back child support. The Creditor argues that the Debtor is a paralegal for a law firm that specializes in bankruptcy and is currently represented by one of those attorneys.

CREDITOR'S AMENDED OPPOSITION

The Creditor filed an amended opposition. Dckt. 27. The Creditor states that due to a scrivener's error, he inadvertently wrote that the contempt order was entered on December 4, 2015. Rather, the Creditor states that the order was entered on December 4, 2014. The Creditor offers the following time-line of events:

1. Contempt order regarding child support and reimbursement, December 4, 2014

2. Filing of Debtor's first Chapter 13 case, January 9, 2015

3. Probation on contempt order completed December 31, 2015

4. Debtor completes credit counseling for second case, January 19, 2016

5. Debtor's first case is dismissed without confirming plan, January 22, 2016

6. Debtor filed the second and instant Chapter 13 case, February 10, 2016

DEBTOR'S REPLY

The Debtor filed an reply to Creditor's opposition on March 25, 2016. Dckt. 29. The Debtor first asserts that the Creditor is classified as a general unsecured creditor. The claim of the Creditor is based on the reimbursement of expense resulting from a paternity action by Debtor. While the Debtor was ordered to pay support to this creditor, that is a separate claim and is not being collected directly. Instead, the claim belongs to Placer County Department of Child Support Services.

The Debtor notes that the Creditor has yet to file a Proof of Claim.

The Debtor argues that the basis for the Objection by the Creditor is for child support the Debtor has not paid "him" rather than the arrearages the Debtor owes to Placer County. The Debtor states that despite the exclusive collection right of the support payments held by Placer County, Creditor filed a proceeding in the Superior Court of California for Placer County to have the Debtor held in Contempt. The Debtor states that the court found her in

contempt. The Debtor states that the matter is on appeal with the California Court of Appeals, Third Appellate Division.

As to the issue of good faith, the Debtor argues that good faith is shown in the instant case. The Debtor asserts that the involuntary dismissal of the prior case was due to an unexpected increase in child support. The Debtor asserts that the purpose for the plan is to pay the child support arrears. The Debtor asserts that she was not adequately assisted by counsel in the prior case. The Debtor reiterates the fact that the Creditor does not have the debt owed, but rather Placer County does.

As to the specifics of the Creditor's objection, the Debtor states that the contempt order issued by the Superior court of California, County of Placer which was brought by the Creditor. However, since it was for support, the Debtor argues that the Creditor did not have grounds to assert contempt since the arrears were owed to the county. The Debtor asserts that the contempt proceeding is an attempt to misdirect the court. There remains a dispute over whether child support is owed, in what amounts and to which participant in that state court case does not reflect the Debtor's intent in this bankruptcy case.

The Debtor refutes the Creditor's assertion that the prior case was dismissed to delay the payment of child support and child support arrears. The Debtor asserts that the ongoing support was paid to Place County by payroll deduction at all time during the prior case and during this case.

The Debtor does not refute the time line of events presented by the Creditor. Instead, the Debtor asserts that the dismissal of the prior case was due, in part, to failing to communicate properly with her prior attorney and the addition of arrears to the Placer County claim. The Debtor's prior plan relied also on a tax refund being paid toward support. However, the Debtor argues that the Internal Revenue Service kept the return toward the non-priority tax debt. This set-off was not recovered by the Debtor's prior attorney. The Debtor asserts that the Debtor's former counsel did not draft an amended plan to resolve the problems in the prior case. The Debtor sought counsel of the Debtor's current attorney who advised that a new case would be better.

The Debtor argues that the matter of the contempt order is on appeal and until it is finally determined, it is irrelevant to the bankruptcy case.

The Debtor also argues that the Creditor's Proof of Claim was improperly filed in the prior case s a priority claimant rather than unsecured. The Debtor's prior attorney did not object to this Proof of Claim.

The Debtor argues that there is no evidence that the replacement car purchased by Debtor is more expensive or that it places creditors in a position worse than that they were in before. The Debtor argues that the replacement vehicle is properly classified as a Class 4 claim and would allow for the Debtor to make payments on the Placer County claim more quickly.

The Debtor next asserts that the Objection to Proof of Claim was not in opposition to the claim being paid, but to the amount of the claim. The Debtor believed that her tax refund was being applied to the Placer County Claim. When it was not, the Objection was sustained. The purpose of the objection was to ensure that the amounts stated were accurate.

Furthermore, the Debtor asserts that the Proof of Claim filed by Placer County is actually lower than anticipated due to the interception of a tax refund. As such, there will be a distribution to unsecured creditors in the approximate amount of $3,476.00.

The Debtor concludes by stating that the instant case was filed in good faith in order to pay the child support payments and arrears. The Debtor also notes that even if Creditor is successful in his attempt in opposing the instant Motion, the Creditor will still be unable to seek relief because the Creditor is not the holder of the claim.

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.

Review of Present Case and Acquisition of Car

Debtor's Chapter 13 Plan provides for a $216.00 a month plan payment for sixty-months. Dckt. 5. The Plan is summarized as follows:

a. Monthly Plan Payments.....$216.00

b. 60 Month Term, Total Payments.....$12,960

c. Payment to Debtor's Counsel.....($ 3,000)

d. Payment of Chapter 13 Fees (Est. 7%).....($ 907)

e. Class 1 Secured Claims.....None

f. Class 2 Secured Claims.....None

g. Class 3 Surrender.....None

h. Class 4 Direct Payments

i. 2014 Camry Payment.....$385.45

i. Class 5 Priority

i. Placer County Child Support.....($8,975.00)

j. Class 6 Special Unsecured.....None

k. Class 7 General Unsecured

i. Estimated $135,868.04 total

ii. Projected Distribution After above.....($ 0.00)

On Schedule I, Debtor states that her gross income is $3,788.00 a month. Dckt. 1 at 41. From this she has withheld $280.47 for taxes, Medicare, and Social Security and $504.00 for domestic support obligations. Debtors states a monthly Take-Home pay of $3003.53.

On Schedule J, Debtor lists ($2,787.45) in expenses. From this she computes having Monthly Net Income of $216.08 to fund the Chapter 13 Plan. In reviewing her expenses, some look modest, with the following exceptions:

A. Personal Care Products.....$170.00

Dckt. 1 at 43-44. The court notes that the expenses include $650.00 a month for "Child Supervised Visitation Fees." *Id.*

In reviewing the Statement of Financial Affairs, the income reported on Schedule I is comparable to that stated for 2015 and significantly higher than stated for 2014. Statement of Financial Affairs Part 2, Question 4; Dckt. 1.

Ruling

Creditor's opposition is basically that Debtor filed bankruptcy to thwart non-bankruptcy court collection efforts. Creditor sees no reason why Debtor did not continue in the prior case. Presumably, if Debtor continued in the prior case, Creditor would not have had a "beef" with that case.

Creditor does reference that in the prior bankruptcy case Debtor objected to the child support claim, and that the objection was overruled. However, it was overruled without prejudice. Bankr. E.D. Cal. 15-20149; Order, Dckt. 120. Debtor commenced her prior case on January 9, 2015. After pending for more than a year, and having the benefit of the automatic stay, Debtor allowed the first case to be dismissed.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The Debtor asserts that in the prior case she filed the case in *pro per*. She later obtained counsel and believed that she would be adequately represented. However, the Debtor asserts that a dispute arose over her support obligation, where interest was later added. The Debtor asserts that due to that dispute she was unable to make the plan payments. Debtor further asserts that the interest should either not have been accruing or it should have been paid through the

Plan. The Debtor states that the Debtor has not retained new counsel and will be able to make future payments.

With the additional briefing by the parties, the court does find that for the instant case Debtor has sufficiently rebutted the presumption of bad faith. There is no evidence that the Debtor is attempting to avoid the payment of child support or arrears, other than as permitted to defer by the Bankruptcy Code. The Creditor frames the two cases in a more nefarious way than what the court interprets them as. There is no indication that the Debtor is attempting to contradict or avoid the payment of claims. The crux of the Debtor's concerns appear to be of who the debt is actually owed. The Creditor appears to be asserting the grounds of Placer County as his own which is improper.

The operation of 11 U.S.C. § 362(c)(3) in this situation presents an interesting duality of that section. While purporting to "terminate the stay," it does so **only as to the Debtor**. 11 U.S.C. § 362(c)(3)(A). The stay is not terminated for any other persons or purposes – including the bankruptcy estate. The provisions of 11 U.S.C. § 362(a) are much broader than the stay applying to the Debtor.

This is contrasted to 11 U.S.C. § 362(c)(4), in which Congress provides that no automatic stay goes into effect **in the bankruptcy case** under the specified circumstances. 11 U.S.C. § 362(c)(4)(A). As this court has previously held, Congress having chosen to use clearly different language in these two subsections, they cannot have the same meaning that there is no automatic stay in the bankruptcy case pursuant to 11 U.S.C. § 362(c)(3)(A).

In the family law arena, Congress has excluded most issues and determinations from the automatic stay as provided in 11 U.S.C. § 362(b)(2). Short of enforcing an order to pay money or determining the rights and interests of the bankruptcy estate in property (28 U.S.C. § 1334(e) exclusive grant of jurisdiction to the federal courts), the State Court will determine the family law issues and rights.

Notwithstanding the filing of the bankruptcy case, Creditor may continue to exercise his rights consistent with 11 U.S.C. § 362(b)(2). Additionally, as some judges may say, "the Debtor is now pinned down in this, the second bankruptcy case, to either 'put up or shut up' financially." Even for family law obligations, the Bankruptcy Code provides for a good faith rehabilitation of family law obligations. Possibly, Creditor and County of Placer may request (or politely demand) that the payments purportedly being made directly by the Debtor as part of the Schedule J expenses be paid through the Chapter 13 Plan – which would insure that the Chapter 13 Trustee has real time knowledge of such payments being current.

Even though the court grants the Motion, it notes that the battle continues, with Creditor objecting to confirmation. The Objection causes the court to question Creditor's basis for being in the court, or whether the County of Placer is the "creditor."

More concerning is that Debtor, having the first bankruptcy case dismissed and now seeking an extension of the stay in this case, is the subject of the Chapter 13 Trustee's motion to dismiss. Dckt. 40. The Motion states that Debtor has failed to make any payments in this bankruptcy case. Debtor having suffered the loss of her prior case, presumably if the Debtor were able

(or intended in good faith) to perform a plan, she would have made sure that timely payment was made to the Trustee. It will be very relevant to the court in considering the Trustee's motion to dismiss not only whether the Debtor cured the default, but a clear, cogent, reasonable explanation as to why and how Debtor (who as spent a year in the prior bankruptcy case) has defaulted with the first payment due in this 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.

11. 15-25445-E-13 GUADALUPE GONZALEZ — MOTION TO CONFIRM PLAN
JME-1 Steele Lanphier — 2-23-16 [60]

Final Ruling: No appearance at the April 12, 2106 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2016. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 23, 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.

12. 15-27047-E-13 PGM-3 PRISCILLA/ANDREW CARRASCO Peter Macaluso OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 6 2-22-16 [75]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 22, 2016. By the court's calculation, 50 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 6 of Bank of America, N.A. is overruled.

Priscilla and Andrew Carrasco, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of $206,403.40. Objector asserts that the Creditor incorrectly calculated the escrow by failing to divide by 12, rather than each month as stated in the escrow analysis. The Movant asserts

that the escrow should be $522.07 (not $512.43) and that the monthly on-going payment of $1,530.96 (not $1,621.32).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Objection on March 28, 2016. Dckt. 84. The Trustee is not opposed to the objection, although the Debtor failed to clarify that the amount provided in the plan was incorrect and why it was incorrect where confirmation is currently sent for April 5, 2016.

The proposed plan lists monthly contract installment amount of $1,621.32. The Creditor's Proof of Claim reflects a monthly escrow payment of $12.43, plus interest and principal of $1,008.89 to total $1,621.32.

CREDITOR'S RESPONSE

The Creditor filed a response on March 29, 2016. Dckt. 90. The Creditor asserts that the Debtor fails to provide any evidentiary support. The Creditor asserts that the ongoing monthly payment is accurately reflected by the escrow analysis submitted in the Proof of Claim. Additionally, the same amount listed in the Proof of Claim is provided in the Debtor's plan.

The Creditor states that, as the escrow analysis indicates, Creditor is required to pay $98.58 for FHA MIP per month. The listed amount of "frequency in months" is one because that amount must be paid monthly. The Creditor argues that this is unlike the other escrow items which must be paid annually, reducing the total amount needed by 12 to produce the monthly amount needed. The Creditor argues that the monthly escrow payment of $612.43 and total ongoing monthly payment of $1,621.32.

DEBTOR'S REPLY

The Debtor filed a reply on April 5, 2016. Dckt. 92. The Debtor asserts that the amount provided for in the plan is based on the amount asserted in the Proof of Claim and would further funds for other classifications if Debtor are successful with this objection.

The Debtor clarifies that "FHA MIP" means that the federal government is insuring the mortgage. The Debtor asserts that the Debtor's escrow payment should not include a private insurer and the monthly charge of $134.83 and the monthly charge of the FHA MIP of $98.58 is duplicative and not necessary for the servicing of this loan.

The Debtor asserts that the escrow amount should be $477.60 for a total payment of $1,486.49. The Debtor argues that the objection should be sustained and the monthly mortgage payment of $1,486.49 should be recalculated, accounted for, and given credit to the Debtor's payment. Additionally, the Debtor requests attorney fees based on the contract for having brought the instant Objection.

DISCUSSION

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

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

A review of the Proof of Claim No. 6 has attached an "Escrow Account Review." In determining the escrow payment, the following information is provided:

Escrow Items	Account Needed	Frequency in Months	Monthly Amount Needed
County taxes	$2,274.11	12	$189.51
Homeowners insurance	$1,619.00	12	$134.83
FHA MIP	$98.58	1	$98.58
County taxes	$2,274.11	12	$189.51
Total monthly base payment amount	$612.43		

The argument made by the Debtor is that the escrow should not include the "Homeowners insurance" and "FHA MIP." As the Debtor argues, the escrow payment should not include the "Homeowners insurance" of $134.83 per month because the mortgage is federally insured, listed as "FHA MIP" in the escrow analysis.

However, the Debtor does not provide any argument, evidence, or testimony that these two items, the Homeowners insurance and FHA MIP, are not separate expenses which both are required.

It is established that if a party is to object to a Proof of Claim, the moving party must provide a factual basis, supported by evidence, (unless it is a purely legal issue) to rebut the presumption of validity of a Proof of Claim. Rather than providing factual grounds supported by evidence, the Debtor merely provides conclusory statements in which the Debtor asserts the Creditor made a mistake. The Debtor initially argued that the Creditor mistakenly failed to divide the "FHA IMP" by 12 in the escrow analysis. As the Creditor responded, the FHA IMP only had 1 listed under "Frequency in months" because that is a repeated monthly expense, rather than a single sum to be paid over the course of a year.

It was not until the response that the Debtor then asserts that the "Homeowners insurance" should be removed as "duplicative" because it is repetitive of the FHA MIP charge. However, the Debtor does not provide any argument or evidence that the two charges are in fact duplicative. Instead, the Debtor appears to assume that because both deal with "insurance" that they are repetitive. The Creditor has not had a chance to respond to the Debtor's new

assertion that the insurance expenses are duplicative. The Debtor does not cite how "homeowners insurance" is the same as "FHA IMP." Rather, the Debtor merely asserts that "Because they both deal with insurance they are duplicative and should be disallowed." This is not a legal basis sufficient to rebut the presumption of validity.

Additional Observations and Issues Relating to the Motion

Debtor filed this objection to claim, but failed to provide any testimony, with the only evidence being the proof of claim itself - which is *prima facie* evidence of the claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtor's counsel, has been in an increasing number of cases, filed pleadings asserting factual issue, but failing to provide testimony of witnesses or admissible evidence. This conduct does not appear to be a "mistake," but has clearly because part of his practice strategy.

The Objection to the Claim consists of the following conclusory contention:

A. Somewhere in the thirty-five page exhibit filed by Debtor there is an escrow analysis which "reflects the system error in failing to divide the amount by 12, rather than each month as stated in the escrow analysis."

B. "Here the creditor is asserting that the payment is $1,621.32, rather than the correct amount of $1,530.96."

Objection, Dckt. 75.

Short of the court preparing the Objection for Debtor, the above provides no basis for the court to determine that the Proof of Claim is in error. This "Objection" states, at best, "creditor says the payments are $xxx, but we say its $yyy — WE WIIINNNNNNN!" This is not a winning Objection.

That Debtor chose to file Reply pleadings make other arguments does not correct the deficient Objection. To the extent it was a "mistake," it represents a poor Objection. To the extent it represents an attempt to bushwhack the creditor and the court with incomplete pleading, such litigation practices are improper.

The court recognizes that these additional comments border on the unduly sarcastic, but the frustration of the court with attorneys, including this attorney, who want to make factual assertions without providing evidence, is caused by the apparent belief that if attorneys break the rules long enough, the court will give up and let the attorneys run the judicial process. Hopefully, this possibly unduly sarcastic commentary may cause the attorneys to properly prepare pleadings and provide competent evidence to support motions, objections, and other contested matters filed in this court.

The Objection to the Proof of Claim is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of Bank of America, N.A., Creditor filed in this case by Priscilla and Andrew Carrasco having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 6 of Bank of America, N.A. is overruled.

13. 15-29147-E-13 JOHN QUIROZ — **OMNIBUS OBJECTION TO CLAIMS**
RK-3 Richard Kwun — **2-27-16 [66]**

ORDER CONTINUING HEARING TO 5/24/16 @ 3:00 P.M.

Final Ruling: No appearance at the April 12, 2016 hearing is required.

The court having previously issued an order continuing the Omnibus Objection to Claims to 3:00 p.m. on May 24, 2016 (Dckt. 90), **the matter is continued to that date.**

14. 16-20250-E-13 INES/ANGELINA MORENO — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSISK
DPC-1 Bruce Dwiggins — 3-14-16 [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 Debtors, Debtor's Attorney, on March 14, 2016. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the Meeting of Creditors on March 10, 2016. The Meeting has been continued to April 14, 2016.

2. The Debtor's plan relies on a Motion to Value Bank of Stockton but has not filed one to date.

3. The Debtor is proposing to pay $5.45 per month to Les Schwab Tires in Class 2. The Trustee argues that Fed. R. Bankr.

P. 3010(b) requires a minimum $15.00 payment unless the court specifically orders otherwise.

Bank of Stockton filed a joinder to the objection on April 5, 2016. Dckt. 17.

The Trustee's objections are well-taken.

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

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Bank of Stockton. However, the Debtor has failed to file a Motion to Value the Collateral of Bank of Stockton. 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.

As to the third objection, it appears that this may have been either a scrivener's error or that the dividend can be less than $15.00 to satisfy the claim. However, in light of the other objections, the objection is sustained.

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

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

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

15. 16-20252-E-13 LEONARD SCROGGINS
DPC-1 Mark Briden

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-14-16 [40]

APPEARANCE OF MARK BRIDEN, COUNSEL FOR DEBTOR REQUIRED FOR APRIL 7, 2016 HEARING

TELEPHONIC APPEARANCE PERMITTED

If Counsel for Debtor Fails to Appear Court Shall Issue an Order to Show Cause Why Bankruptcy Case Should Not be Dismissed With Prejudice

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, on March 14, 2016. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor does not have the ability to make the plan payments.

   a. The documents filed are on the outdated forms. The Debtor appears to only have $100.00 per month available for plan payments.

   b. The Statement of Financial Affairs shows no income for 2014 and the Debtor only lists an ex-spouse. The Trustee states that on Schedule I shows what appears to be a non-filing spouse. The non-filing spouse's income is shown as $1,687.00. The Trustee states that, without proof of the income, the Debtor does not appear to have the ability to pay $100.00 a month. (The Trustee notes that this may be a mere oversight of the Debtor and requests clarification).

   c. The Debtor may have other significant expenses that are not provided for in Schedule J. The Schedule J currently provides for $1,100.00 for rent for 8462 Eldorado St., Stockton, California. This property is shown on the petition as not the Debtor's street address (which in Redding) but as the Debtor's mailing address. Scheduled I does reflect IHSS income of $3,500.00 per month, although no historic income for IHSS is provided on the Statement of Financial Affairs, Question 2.

   Schedule A shows a property interest in 5 building lots. The plan itself does not provide for the debts to Lake California Property Association, Tehama County Tax Collector, and Wells Fargo Home Mortgage, which were scheduled as secured by the property lots or real property in Redding. The Trustee is not certain whether the Debtor has additional expenses based on what appears to be a significant commute to Stockton, or based on the real property lots.

2. The Debtor failed to provide proof of his Social Security Numbers to the Trustee to establish the Debtor's identity pursuant to the request of the U.S. Trustee and Chapter 13 Trustee. Where $1,050.00 of the Debtor's income is shown as his social security income, this appears important for the Debtor to show.

3. The Trustee objects to the confirmation of the Debtor's plan and is not certain whether the plan has been proposed in good faith. The Trustee argues that the instant case appears to be a mere Chapter 7 disguised as a Chapter 13.

4. The plan does not provide for the priority claim of Employment Development Department.

5. The Plan relies on the Motion to Avoid Lien of Naomi Witcher and Motion to Avoid Lien of Leonard Scroggins.

6. Debtor's plan proposes to pay $1,500.00 in attorney fees. This is after counsel was $1,000.00 pre-filing for a total attorney's fees of $2,500.00. Debtor's Rights and Responsibilities agree with th Debtor's plan. The Debtor's Disclosure of Compensation of Attorney for Debtor indicate that fees total $2,810.00 of which $1,810.00 was paid prior with a balance of $1,000.00. The Statement of Financial Affairs agree with the Disclosure of Compensation. The Debtor's documents fail to clearly indicate the total fees charged in this case and how much was paid prior to filing.

DEBTOR'S RESPONSE

The Debtor filed a response to the Trustee's Objection. Dckt. 51. The Debtor states that he does not oppose the objection and will file a first amended plan and schedule for confirmation. In response to the Trustee's objection, the Debtor states the following:

1. The plan will be amended to provide for the payment of the priority claim of the EDD. The Debtor also states that he initially informed his attorney that his ex-spouse Naomi Witcher had recorded an Abstract of Judgment in both Shasta and Tehama County which is incorrect.

2. The Debtor argues that the social security income to determine disposable income is not included under 11 U.S.C. § 1325(b)(3).

3. Schedule I does not state the Debtor receives IHSS income of $2,500.00 per month, as indicated the $3,500.00 per month is from the pension of Debtor.

4. The Debtor has provided his Social Security number to the Trustee.

5. The petition states that the Debtor has a previous Chapter 7 bankruptcy that was filed on October 8, 2008.

6. The Motion to Value Collateral of Roger Camann 1993 Trust is scheduled for hearing on April 12, 2016.

7. The attorney's fees are $2,500.00 with attorney fees of $1,500.00 being paid prior to the filing. Any reference to $1,810.00 includes the filing fees of $310.00.

8. On February 1, 2016, a spousal waiver was filed.

DISCUSSION

The Response filed by Debtor is just argument by the attorney, unsupported by any additional evidence. To the extent additional "facts" are argued, such facts must be based on evidence already before the court. Second,

the three page Response is just argument by Debtor's attorney, without any citation to case law, statute, or regulation.

Overview of Trustee's Objection

The Response appears to miss the main thrust of the Trustee's Objection to Confirmation, which is shown by the following statements in the Objection:

A. "The documents filed with the Court, which are not the new official forms required as of December 1, 2015 but are the old official forms,...." Objection, p. 2:2-4; Dckt. 40.

B. "The Statement of Financial Affairs, Question 2, (DN #1, Page 29), shows no income for 2014, and Question 8, (Page 33), shows an ex-spouse and do not show a current spouse...without proof of this the Debtor does not appear to have the ability to pay even $100.00 per month." *Id.*, p. 2:5.5-11.5.

C. "[w]here the Debtor is proposing only $100 a month and not bothering to fill out correctly the paperwork required, including the current forms, the Trustee makes this objection to clarify the record.)" *Id.*, p. 2:15.5-17.5.

The schedules filed by Debtor are incomplete, leaving gaps of necessary information. Debtor's Response does not attempt to correct the prior incomplete documents, but merely argue points based on non-existent evidence.

Debtor Intending to File and Amended Plan

The Response begins with the statement that Debtor will "amend" the Plan. Generally, this means that the Debtor will start over with a new "amended plan." Thus, it appears Debtor is stating that he is not pursuing the present plan, but will start fresh and his current plan may be denied confirmation.

Residence of Debtor
Income and Expenses of Debtor As Stated Under
Penalty of Perjury on the Schedule

The court begins with the information stated by Debtor under penalty of perjury on the Petition, Schedules and Statement of Financial Affairs. These Petition, Schedules and the Statement of Financial Affairs were prepared with the assistance of counsel and represent what may be the best set of information which Debtor could prepare - in the cool, calm of planning the bankruptcy filing, or if filed in an emergency, as corrected in the three months since this bankruptcy case was filed.

Beginning with the Petition, confirms that he lives at 1113 Echo Rd Redding, California. Petition, p. 1; Dckt. 1. (All references to "Petition" in this Ruling are to Dckt. 1.) On the Statement of Financial Affairs, Question 15, that he had no prior residence in the three years prior to the January 2016 commencement of the current bankruptcy case. Statement of Financial Affairs, Dckt. 1. (All references to the "Statement of Financial Affairs Question" in this Ruling is to Dckt. 1.)

On Schedule J, Debtor lists a total of ($6,137.00) in expenses. Schedule J, Dckt. 1 at 27. (All references to "Schedule" in this Ruling is to Dckt. 1.) These expenses consists of:

A. Rent/Mortgage.....($1,233.00)

B. Home Maintenance.....($ 100.00)

C. Electricity/Heating.....($ 300.00)

D. Water/Sewer/Garbage.....($ 115.00)

E. Telephone/Cable.....($ 325.00)

F. Food/Housekeeping.....($ 700.00)

G. Clothing/Laundry.....($ 152.00)

H. Personal Care Products.....($ 300.00)

I. Medical/Dental.....($ 400.00)

J. Transportation.....($ 500.00)

K. Entertainment.....($ 250.00)

L. Vehicle Insurance.....($ 234.00)

M. Vehicle Installments.....($ 428.00)

N. Rent 8426 El Dorado.....($1,100.00)

Schedule J.

On the Statement of Financial Affairs, Question 1, Debtor states that in 2016, 2015, and 2014 that Debtor has no income from any business. On Schedule J, there are no business expenses. On Schedule I there is no business income. On Schedule G, Debtor states that he has no unexpired leases of any property. On Schedules A and B there is no reference to any connection to having assets in Stockton, California, the location of the 8426 El Dorado Property for which Debtor states that he has a necessary $1,100.00 monthly rental expense.

However, on the Petition Debtor states under penalty of perjury that the Stockton address is his mailing address, notwithstanding the Debtor further stating under penalty of perjury that his residence is in Redding, California. Petition. The court takes judicial notice that Redding, California is 210 miles from Stockton, California, which if traveling an average speed of sixty-five miles an hour would take at least three and one-half hours, if no traffic congestion is encountered. This is a long way to travel each day to obtain someone's mail.

Thus, it appears that there is no reason for the Debtor, living in Redding, California, to be paying rent of $1,100.00 a month for some unidentified purpose for property in Stockton, California.

While most of Debtor's expenses other wise do not look unreasonable, a couple raise issues since Debtor has chosen not to provide any testimony in response to the Objection to confirmation. Debtor states on Schedule J that he has, and will have, $4,800.00 a year in out-of-pocket medical and dental expenses, notwithstanding whatever medical insurance he may have and Medicare. Additionally, Debtor has $300.00 in expenses monthly just for "personal care products." Finally, Debtor states that he has $500.00 a month for gas, registration, and vehicle repairs. All of these strike the court as being overstated.

Review of Income

On income side, Debtor states monthly gross income of $6,237.00 on Schedule I. Debtor is correct, Debtor lists having $3,500.00 in pension income and $1,050.00 in Social Security income, and lists the non-debtor spouse having $787.00 a month in Social Security income and $900.00 in IHHS income – whatever that acronym may stand for as used by Debtor.

Debtor's counsel then argues that Debtor has Social Security income of $1,050.00 a month and the non-filing spouse has Social Security income of $787.00 a month. Counsel then states that "Official form 22C1 does not include Social Security income to determine disposable income under 11 USC 1325(b)(3)." Response, p. 2:4:6.5, 10.5-11.5; Dckt. 51. While citing to an "Official form" (which forms as the court and attorneys know, may not quite comply with the law), Debtor's counsel provides the court with no legal analysis as to what is presumably the argument – the Social Security income should not be included in the court: (1) computing projected disposable income and (2) determining the reasonable and necessary expenses used in computing projected disposable income. Additionally, the Response does not provide the court with any calculation of projected disposable income. It appears that Debtor seeks to enlist the court in computing and advocating such position for Debtor.

To the extent that Debtor may have a "winning argument" on this point, there is an issue of whether such benefits cover expenses which Debtor is also trying to charge against non-Social Security income, effectively double dipping expenses.

Overview of Chapter 13 Plan

One of the Trustee's objection is that there is no financial restructuring of the Debtor in the Chapter 13 "Plan," but merely a disguised Chapter 7. The court notes that Debtor filed a prior Chapter 7 case in 2008, and therefore is not yet eligible for a discharge in a second Chapter 7 case. Bankr. E.D. Cal. 08-35651, filed October 28, 2008.

The Chapter 13 Plan provides for Debtor to make a minimal $100.00 a month payment for 36 months. This totals $3,600.00 for the life of the Plan. After subtracting seven percent ($252.00) for estimated Chapter 13 Trustee fees, this leaves $3,348.00 to fund the Plan. Debtor's counsel is to be paid an additional $1,000.00 through the Plan, leaving $2,348.00 for creditors.

The following treatment is provided for claims:

A. Class 1 Secured.....None

B. Class 2 Secured.....

1. Witcher, 506(a) Valuation.....$0.00

2. Camann, 506(a) Valuation.....$0.00

C. Class 3 Surrender.....None

D. Class 4 Direct Payment.....

1. First Investor (Ford Focus)

E. Class 5 Unsecured Priority.....None

F. Class 6 Unsecured Special Treatment.....None

G. Class 7 General Unsecured.....0.00% Dividend

Plan, Dckt. 5.

While it is appears obvious that some small dividend may be available general unsecured claims projected in the plan to total $182,666.00, Debtor fails to even attempt to make a good faith estimate of a percentage dividend - instead electing to falsely make it appear that there will be no dividend.

It appears that the dividend for unsecured creditors is even higher, in light of there appearing to be $1,100.00 in unwarranted expenses on Schedule J – with increases the dividend by $36,600.00 over the thirty-six months of the proposed Plan.

With respect to other claims, Debtor fails to provide for the claims secured by the Cottonwood parcels - which Debtor admits under penalty of perjury on Schedule A are over encumbered.

Additionally, Debtor ignores the claim secured by the Redding Property, which is also over encumbered. Schedule A. Even if the Debtor intends to directly pay the debt, if it qualifies for Class 4 treatment, it must be provided for through Class 4 in the Plan.

Motions to Value Secured Claims

The Plan is dependent on at least two motions to value secured claims. The court is denying without prejudice the pending motion to value the secured claim of the Roger Camann 1993 Trust due to defects in service. A prior motion to value this secured claim was denied by the court for various reasons. Civil Minutes, Dckt. 47.

The court also previously denied a Motion to Avoid the lien of his ex-wife. Civil Minutes, Dckt. 45.

Debtor’s Plan fails to provide for these two secured claims.

Debtor’s Good Faith

The Bankruptcy Code requires that not only the Plan be proposed in good faith, but the Debtor commenced the case in good faith. 11 U.S.C. § 1325(a)(3) and (7). In this bankruptcy case, the Debtor's conduct may well establish that Debtor has not filed, nor prosecuted, this case in good faith, or proposed this Plan in good faith. Debtor has completed the Schedules and filed declarations under penalty of perjury which appear to contain inaccurate information. Debtor, represented by counsel, does not have the luxury of contending that he "doesn't understand what under penalty of perjury means."

Improper conduct, and providing inaccurate (false) information under penalty of perjury may well not be grounds for merely denying confirmation of this one plan, but all plans in this case, and possibly other cases. It maybe grounds to dismiss the bankruptcy case with prejudice - rendering all of the debts non-dischargeable in future bankruptcy cases.

While parties may advance arguments in good faith and present evidence (including good faith testimony, even though the court may not find it persuasive in the end), testimony is given under penalty of perjury, pleadings filed, and arguments made subject to the certifications under Federal Rule of Bankruptcy Procedure 9011. The federal judicial process is not one in which false or misleading statements are made or arguments presented, and then when "caught," the response is "oops, ok, I'll be honest or follow the law now."

It appears that the Plan, as filed, is merely a thinly veiled attempt to circumvent established Supreme Court law that 11 U.S.C. § 506(a) cannot be used to "lienstrip" in a Chapter 7 case and the Congressional prohibition on obtaining discharges in repeat Chapter 7 cases during specified periods of time. The proposed "plan" in this case offers no financial "rehabilitation" or "restructure," ignores secured claims, and appears to intentionally overstate or list expenses for which there is no *bona fide* purpose.

Sustaining Objection to Confirmation

The Trustee's objections are well-taken. In fact, the Debtor concurs that the proposed plan, as presented, is not confirmable and that the Debtor will be required to file an amended plan. The court concurs that, due to the factual circumstances of the instant case and the various objections raised by the Trustee, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). In addition, serious issues are raised as to whether this case has been filed, is being prosecuted, and the plan proposed in good faith. Further, Debtor has provided incomplete and inaccurate information under penalty of perjury (such as testifying under penalty of perjury that his ex-wife has a "judgment lien" when now it appears, not under penalty of perjury, that it is a consensual lien). The objection is sustained and the Plan is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

16. 16-20252-E-13 LEONARD SCROGGINS
MWB-3 Mark Briden
MOTION TO VALUE COLLATERAL OF ROGER CAMANN 1993 TRUST
3-7-16 [24]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 5, 2016. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of The Roger Camann 1993 Trust ("Creditor") is denied without prejudice.

The Motion to Value filed by Leonard Scroggins ("Debtor") to value the secured claim of The Roger Camann 1993 Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1113 Echo Road, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $160,000.00 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 only address served for the 1993 Roger Camann Trust was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Therefore, because the Debtor only served the instant Motion on the Creditor at a P.O. Box, the Motion is denied without prejudice.

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

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

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

ALTERNATIVE RULING

The Motion to Value filed by Leonard Scroggins ("Debtor") to value the secured claim of The Roger Camann 1993 Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1113 Echo Road, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $160,000.00 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 $260,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $73,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Leonard Scroggins ("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 The Roger Camann 1993 Trust secured by a second in priority deed of trust recorded against the real property commonly known as 1113 Echo Road, Redding, 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 $160,000.00 and is encumbered by senior liens securing claims in the amount of $260,000.00, which exceed the value of the Property which is subject to Creditor's lien.

17. 16-21256-E-13 HEATHER WRIGHT
BLG-1 Paul Bains

MOTION TO VALUE COLLATERAL OF CITIBANK/BEST BUY
3-9-16 [13]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, "Citibank/Best Buy", and Office of the United States Trustee on March 9, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of "Citibank/Best Buy" ("Creditor") is denied without prejudice.

The Motion filed by Heather Wright ("Debtor") to value the secured claim of "Citibank/Best Buy" ("Creditor") is accompanied by Debtor's declaration.

UNIDENTIFIABLE CREDITOR NAMED IN MOTION

Debtor seeks to value the collateral of "Citibank/Best Buy." However, the court cannot determine from the evidence presented what, if any, legally recognized entity the Debtor asserts is a creditor and whose secured claim is to be valued pursuant to this Motion. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid in finding creditors.

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.

This court will not issue "maybe effective, maybe not effective" orders. The Debtor has not provided any evidence, testimony, or argument that the creditor is actually "Citibank/Best Buy." It appears to the court that this name using a "/" was placed in the Motion in order to cover "everything and the kitchen sink." Unfortunately, the real party in interest who is the holder of the debt needs to be listed.

Testimony of Debtor

Debtor has provided her testimony under penalty of perjury that she has a creditor with the name Citibank/Best Buy. While the court cannot identify any such entity, Debtor stakes her credibility as a witness by having now stated that there is an entity "Citibank/Best Buy."

Denial of Motion

Therefore, due to the Debtor's failure to properly name the creditor, the Motion is denied without prejudice.

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

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

18. 15-25168-E-13 DEBRA MCCLAIN MOTION TO CONFIRM PLAN
PLC-2 Peter Cianchetta 2-9-16 [65]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 9, 2016. By the court's calculation, 63 days' notice was provided. 42 days' notice is required.

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

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

Debra McClain ("Debtor") filed a Motion to Confirm the Amended Plan on February 9, 2016. Dckt. 65.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on March 22, 2016. Dckt. 76. The Trustee opposes confirmation because it is not clear if Jeffery and Patricia are Debtor's brother and mother as those stated in the Declaration. The Declaration in support states the following:

> To address the Court's concern about my expenses I have the following explanation. My Mother and Brother live with me. They each pay for their own food. My mother pays $500 per month and she pays the SMUD bill. I have taken in a renter, Paul Swaggerty who also pays $500.00 per month in rent. I live

a very simple life and do not spend much other than the house payment.

Dckt. 37.

The Debtor filed supplemental Schedules I and J, which lists Debtor's 46 year old brother as a dependent. Dckt. 69. Schedule J does not list the Debtor's mother. The Statement of Financial Affairs states Jeffery McClain and Patricia McClain as living in Debtor's residence. It is not clear if Jeffery and Patricia are Debtor's brother and mother stated in the declaration.

Where the Debtor proposes a final payment of $95,760.76 in the 49th month of the plan, it is not clear if the Debtor will be able to refinance the real property.

CREDITOR'S OPPOSITION

Dusty Sullivan Profit Sharing Plan, Robert Chonka Profit Sharing Plan, Poly Comp Trust Company and West America Bank for the benefit of Marilyn Chiang, Dean A. Howell Profit Sharing Plan, Kenneth Meyer IRA, Connie Snowdon formerly known as Connie Holt, Margo Glendenning, David Muraki and Judy Muraki as joint tenants custodian for Peter Muraki, and any other owners and beneficiaries of a deed of trust recorded November 19, 2003, as Instrument No. 2003-0194949 ("Creditor") filed an opposition on March 25, 2016. Dckt. 79.

The Creditor opposes confirmation on the following grounds:

1. The plan does not treat all claims in the secured class in the same manner. The Plan in Section 2.09 proposes to pay the first deed of trust holder on Debtor's residence 100% of their owed amount, and yet proposes to pay Creditors as a secured second deed of trust holder on Debtor's residence only $80,000.00 of the $151,198.41 owing on the Creditor's note. The Creditor also asserts since the entirety of the amount of the Note is now due and Debtor can only extend the payment a maximum of 60 months, the Plan must allow for the entire amount.

2. The Plan is not feasible because the Creditor's full Note needs to be paid, which would require $2,519.00 per month on the Creditor's claim alone.

3. The Debtor is attempting to obtain a preliminary injunction without providing for a bod or adequate protection payments.

DISCUSSION

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

The Trustee and Creditor's objections are well-taken.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the Debtor adequately fund the plan with future earnings or other future income that is paid over to the Trustee, 11 U.S.C. § 1322(a)(1), provide for payment in full

of priority claims, 11 U.S.C. § 1322(a)(2) & (4), and provide the same treatment for each claim in a particular class, 11 U.S.C. § 1322(a)(3). But, nothing in § 1322(a) compels a debtor to propose a plan that provides for a secured claim.

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

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

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

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

Review of Adversary Proceeding

On August 3, 2015, Debtor commenced an Adversary Proceeding, naming the following defendants in the Complaint:

A. Dusty Sullivan
B. Sierra Investments (an entity of Dusty Sullivan)
C. Dusty Sullivan Profit Sharing Plan
D. Robert Chonka Profit Sharing Plan
E. Westamerica Bank, Custodian (for 5 IRAs)
F. Dean Howell Profit Sharing Plan
G. David and Judy Muraki, Custodians

Complaint, Adv. 15-25168.

The court summarizes the major contentions in the Complaint as follows. Dusty Sullivan is a licensed real estate broker who acted as a mortgage broker in connection with a loan made to Debtor. The loan was made on September 26, 2006 for the sum of $80,000.00. The loan is secured by the Roseville Ridge Collateral. It is alleged that Dusty Sullivan misrepresented the terms of the loan.

The specific alleged misrepresentations as stated in the Complaint are: (1) "annual percentage rate is substantially incorrect;" (2) amount financed was $76,167.00; (3) finance charge should have been $52,633.00 (not $120,800); and "itemization of amount financed is not completed." *Id.* at 4, ¶ 21. Additionally, the California Mortgage Loan Disclosure Statement: (1) states a total of 62 months worth of payments, which conflicts with the TILA disclosure;

and (2) a bullet point to be completed that the "loan may/will/will not" was not competed by selecting which of the three applies to the loan. *Id.*, ¶ 23.

It is alleged that ERISA violations exist because Dusty Baker charged a brokerage fee in connection with the portion of the loan which was made to his own retirement account to which he owed a fiduciary duty. It is further alleged that Mr. Baker was paid a fee for portions of the loans which were sold to pension plans for which he was not a fiduciary. It is further alleged that Mr. Baker and other investors engaged in other improper, unspecified transactions.

The First Cause of Action is an objection to the claim of all of the defendants, based on the loan having been a prohibited transaction under ERISA and unenforceable.

The Second Cause of Action is titled in declaratory relief, requesting a "declaration" that the "relief requested" requires the voiding and release of the Defendants' lien. It then further states that the Plaintiff requests that the court "reform" the obligation. The court is unsure what "declaratory relief" is proper based on these allegations, as opposed to there being an actual case or controversy concerning the actual rights and interests of the parties which have and are being enforced.

The Third Cause of Action identifies California common law and statutory fraud and unfair business practices as a basis for relief.

The Fourth Cause of Action lists state constructive fraud and unfair business practices statutory provisions as the basis for the claims therein.

Plaintiff also requests attorneys' fees pursuant to the contracts between the parties.

Attached as Exhibit A to the Complaint is a copy of a promissory note listing the various Defendants as payees. *Id.* at 17. The amount of the Note is stated to be $80,000.00. This Note form is not completed, but states that there is an Addendum, which is not included as part of Exhibit A attached to the Complaint. Exhibit B is a copy of a Deed of Trust, in which the various Defendants are listed as beneficiaries. *Id.* at 19. Exhibit C is the California Association of Realtor Disclosure Statement listing the amount of the loan to be $80,000.00, the interest rate to be 14.5%, the finance charge to be ($4,302.00), the amount financed to be $80,000.00, and the total payments for 61 months to be ($128,800.00). The monthly payments, for a period of 61 months, is stated to be ($800.00). *Id.* at 25. This form does not appear to be completed.

Exhibit C is the California Mortgage Loan Disclosure Statement Form. This lists there being an $80,000.00 loan, ($3,500) of the proceeds used to pay the broker's commission, ($802.00) to pay costs and expenses, and there being $75,698 estimated cash payable to borrower. It states that the loan is at 12% interest, with interest only monthly payments of ($800.00). It further states that the monthly payments are ($800) for sixty-one months, with a final balloon payment of ($80,000.00).

Proof of Claim No. 2

Seven of the Defendants filed Proof of Claim No. 2 (Westamerica Bank is not listed as a creditor on the Proof of Claim). The claim is asserted in the amount of $151,198.41. The attachments to Proof of Claim No. 2 includes a foreclosure notice identifying the following amounts which make up the debt computed to be $151,198.41:

A. Unpaid Principal.....($80,000.00)

B. Accrued Interest From 3/29/2010.....($50,362.12)

C. Accrued Late Charges.....($ -0-)

D. Compounded Interest.....($19,764.47)

E. Advance by Beneficiary.....($ 800.00)

F. Interest on Advance by Beneficiary.....($ 11.20)

G. Foreclosure Fees and Costs.....($ 255.62)

This Attachment includes a document titled “Note Addendum.” It has a signature for what appears to be the Debtor and the date September 25, 2006 at the bottom. This Addendum lists terms for an NSF fee and collection costs if payment is not made, a late charge, prepayment penalty, and compounding of interest.

Conclusion

The proposed Chapter 13 Plan presents significant challenges not only for creditors, but the Debtor herself and the court. Here, while some provision is made for the Creditor’s claim, it is an interest only payment for an indeterminate amount of time. The “plan” makes not provision to repay the claim, but merely states that at some future date whatever debt is determined to be owed will be paid - somehow from the sale or refinance of the property.

The plan does require payment in full to be made to the creditor holding the senior lien on the collateral, which provides some protection to the objecting Creditors. Corresponding, by paying the creditor holding the senior lien Debtor gets to continue to reside in the house and generate some rental income.

Even without providing for other than a monthly payment of $800.00 to the objecting Creditors, the viability of a “restructure” through Chapter 13 has not been shown. It appears that Debtor has unrealistic expenses stated on Schedule J, which may be “numbers filled in” solely for the purpose of generating a bottom line pre-determined projected disposable income figure. These “expenses” include the following:

a. Electricity, Heat.....($ 40.00)

b. Food and Housekeeping Supplies.....($200.00)

c. Clothing.....($ 5.00)

d. Medical, Dental.....($ 50.00)

Dckt. 69 at 4-5.

Rather than a "restructure," this plan appears to be creating a silent, secret preliminary injunction for the Adversary Proceeding, or one in an appropriate District Court or Superior Court action. If in federal court, Federal Rule of Civil Procedure 65 and Federal Rule of Bankruptcy Procedure 7065 require the posting of a bond, as determined necessary by the trial court. When this court has allowed the automatic stay to be used in lieu of a bond for litigation (whether in the Bankruptcy Court, District Court, or Superior Court), the debtor has been required to make a significant adequate protection payment to create a self funding bond which is held by the Clerk of the Court or paid to the Creditors to reduce the undisputed amount of the debt.

Here, the Debtor has not shown an ability to so self-fund a bond as part of a bankruptcy plan (and does not so propose). Rather, it appears that the fight is really outside of a bankruptcy plan, with the trial judge determining the amount of a bond, if any, to support a preliminary injunction on the facts stated for the various causes of action in the complaint. For federal court, see *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) for sufficient pleading for federal court complaints.

Rather, the Plan creates the illusion that there is only an $80,000.00 secured claim and Debtor has the right to pay only $80,000.00 over forty-nine months of a plan. Amended Plan, Class 2; Dckt. 68. Such payments provided for in Class 2 would be $2,106.71 a month. However, it provides for only $800.00 a month, with an "*."

In the Additional Provisions, there is additional treatment for this Class 2 Claim, that Debtor will pay $800.00 a month as "adequate protection." Only if the Debtor defaults in the $800.00 a month plan payment to this Creditor would the Creditor then be authorized to proceed with a non-judicial foreclosure sale.

While phrased as an "adequate protection payment," Debtor is really proposing an injunction in further of litigation. The payment does not bear a relation to the amount of the debt, but a minimal payment divorced from the reality of the litigation.

In sum, the proposed second amended plan does not appear to correct any of the underlying issues the court had with the first amended plan. In fact, as stated in the Trustee's objection, there appears to be purposeful opaque facts as to who is actually living in the residence and who is, in fact, a dependent of the Debtor. Without even the basic accuracy of the Debtor's financials being clear, the court cannot confirm a plan.

Debtor has not presented to the court a plan which the court can determine is feasible. The Plan does not comply with the requirements of 11 U.S.C. §§ 1322 and 1325 to adequately provide for objecting Creditors' secured claim.

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

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

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

19. 16-21374-E-13 MRL-1 ENRIQUE/MICHELLE SERRATO Mikalah Liviakis

MOTION TO VALUE COLLATERAL OF NEIGHBORWORKS HOMEOWNERSHIP CENTER
3-14-16 [11]

Final Ruling: No appearance at the April 12, 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 March 15, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Enrique and Michelle Serrato ("Debtor") to value the secured claim of NeighborWorks HomeOwnership Center ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8120 Hearthstone Place, Antelope, California ("Property"). Debtor seeks to value the Property at a fair market value of $250,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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 $305,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $14,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Enrique and Michelle Serrato ("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 NeighborWorks HomeOwnership Center secured by a second in priority deed of trust recorded against the real property commonly known as 8120 Hearthstone Place, Antelope, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the

Property is $250,000.00 and is encumbered by senior lien securing claims in the amount of $305,000.00, which exceed the value of the Property which is subject to Creditor’s lien.

20. 16-20576-E-13 DPC-1 DANA MAGWOOD AND TRISHA GUTIERREZ-MAGWOOD

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-9-16 [20]

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, 22 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to appear at the First Meeting of Creditors. 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.

APRIL 5, 2016 HEARING

At the hearing, the court continued the Objection to 3:00 p.m. on April 12, 2016, which is after the Continued Meeting, to allow the Debtor the opportunity to appear.

TRUSTEE'S STATUS REPORT

On April 1, 2016, the Trustee filed a status report. Dckt. 27. The Trustee reports that the Debtor appeared at the continued Meeting of Creditors on March 31, 2016. However, the Trustee now objects on the following bases:

1. The Debtor is delinquent $3,359.07 in plan payments. No payments have been made to date.

2. The Debtor's Motion to Value Hyundai Motor Finance was denied and the Debtor has failed to file a new Motion to Value.

3. Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(A)(6). Schedule J lists the Debtor's net income as $3,184.85. The plan calls for payments of $3,359.07.

4. It appears that GM Financial should be listed in Class 2 of the plan, pursuant to its Proof of Claim No. 4.

DISCUSSION

The Trustee's objections are well-taken. While the Debtor has appeared at the Meeting of Creditors, the Trustee's supplemental objections are concerning.

The basis for the Trustee's objection is that the Debtor is $3,359.07 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Hyundai Motor Finance. However, the Debtor has failed to file a Motion to Value the Collateral of Hyundai Motor Finance following the denial of the Debtor's previous Motion. 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.

Third, the Debtor's Schedule J lists a $3,184.85 monthly net income, while the Plan provides for a $3,359.07 monthly payment. Taken together, this suggests the plan is not feasible. *See* 11 U.S.C. § 1325(a)(6).

Lastly, the Trustee argues that the Debtor improperly classifies GM Financial as a Class 1 claim when, based on the Proof of Claim No. 4, the claim should be provided for as a Class 2 claim. The Trustee is correct. A review of the Proof of Claim No. 4 shows that the claim matures during the life of the plan. As such, the Trustee is correct that the claim should be provided for as a Class 2 claim.

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.