

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 14, 2015 at 3:00 p.m.

NOTICE - CALLING OF L.B.R. 9014-1(f)(2) NOTICED MATTERS

The court will call at the start of the calendar the following Matters:
Items # 9, 31, 33, 52, and 60

These appear to be matters noticed pursuant to L.B.R. 9014-1(f)(2) which do not *appear to the court* to be contested. If the matter is called and an opposition is to be asserted, advise the court only that an opposition is asserted. The court will then call that matter in the order that it is set out on the calendar.

If your L.B.R. 9014-1(f)(2) matter is not listed above, do not request *that the court call it* out of order because you believe it is uncontested.

As previously permitted, Parties or Counsel with specific calendar or personal matter conflicts may notify the Courtroom Deputy Clerk and request that the matter be specially called.

- | | | | |
|----|---|-----------------------------|--|
| 1. | 14-31901 -E-13
DPC-1 | SUSAN YORK
Harry D. Roth | CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK AND OBJECTION TO
PROFESSIONAL FEES OF HARRY D.
ROTH
1-22-15 [37] |
|----|---|-----------------------------|--|

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.

April 14, 2015 at 3:00 p.m.

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 January 22, 2015. By the court's calculation, 32 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 Opposition was stated and a briefing schedule set.

The court's decision is to sustain the Objection.
--

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

1. The Debtor appears to have filed in the wrong district and the case should be dismissed for improper venue. The Debtor currently is residing in Colorado and the case should have been filed in Colorado based on general venue (28 U.S.C. § 1391). Under Local Bankr. R. 1002-1(d), the Debtor should probably file a motion to allow the current venue as the local rules contemplate.
2. A motion is required for attorney fees. The Debtor failed to choose any box in § 2.06 of the plan although Rights and Responsibilities were filed (Dckt. 9). A separately set Motion should be required to obtain approval of attorney fees, and the Trustee objects to the allowance of any attorney fees under the "no look" procedure allowed under Local Bankr. R. 2016-1(c). The Disclosure of Compensation of Attorney for Debtors (Dckt. 8, pg 35) appears to list in item 7 that the attorney services do not include some services required under Local Bankr. R. 2016-1(c) such as relief from stay actions.
3. It appears that the Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6). The plan payment required is \$307.00, however, the Debtor's budget does not

support the plan payment. Debtor's Schedule J indicates a monthly net income of \$30.86. The Debtor admitted at the First Meeting of Creditors held January 15, 2015 the \$500.00 listed on Schedule I, line 8g is anticipated income. Even if the Debtor applied for PERS benefits where the Debtor has not yet received approval of any benefits, there is insufficient evidence to show the Debtor can make the plan payments.

4. The Trustee is uncertain if Debtor's plan is the Debtor's best effort, 11 U.S.C. § 1325(b). Schedule B lists life insurance death benefits in the amount of \$177,658.54. The Debtor does not propose to pay any of the proceeds into the plan where the Debtor is under the median income. The plan proposes to pay \$307.00 per month for 60 months with no less than a zero percent paid to the unsecured creditors.
5. The Trustee is uncertain that unsecured claims will receive what they would have in the event of a hypothetical Chapter 7, 11 U.S.C. § 1325(a)(4). The Debtor admitted at the First Meeting of Creditors she received a lump sum of \$10,000.00 which she used for funeral and other expenses. See Statement of Financial Affairs, Dckt. 8, No. 2, pg. 27. The Debtor refers to \$50,000.00 withdrawn from community property on Schedule C (Dckt. 8, pg. 8). While the Debtor asserts that this could be recoverable up to the entire amount, the Debtor then indicates no effort has been made and asserts the value of \$50,000.00 is \$15,136.31.

DEBTOR'S DECLARATION

On January 29, 2015, Debtor filed a Declaration stating that she lived in the Klamath Dr. Property with her husband from 1994 to 2013 (no specific date provided). Dckt. 48. Debtor states that she was laid off from her job with AAFES at Travis AFB, and accepted a transfer to the airbase in Denver so as to continue in the Federal Employee Retirement System. Debtor has continued to maintain her California driver's license and filed joint income tax returns with her husband using the California address. Debtor states in this Declaration that it was her intention to find a job in California and return here when possible.

The Declaration also provides testimony as to Debtor's belief that the mortgage payments were being made by her late husband while she was in Colorado. The foreclosure came as a shock to her. Her testimony indicates that there were additional factors which came into play with the late husband's failure to make the mortgage payments (having both an Air Force and CalPERS retirement). Further, the circumstances described in the Declaration relating to his death are indicative of other health problems which would negatively impact a person's proper handling of finances.

FEBRUARY 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 14, 2015, ordering that opposition shall be filed and served on or before March 13, 2015.

TRUSTEE'S RESPONSE

The Trustee filed a response on March 20, 2015. Dckt. 71. The Trustee states that the Debtor has not filed an opposition by the court set deadline.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on April 7, 2015. Dckt. 74. The Debtor states that the opposition is being filed two weeks late because of the Debtor's emotional state following her husband's death, the Debtor's geographic location, and the need for amendments.

As to the objection, Debtor states that she has since taken additional leave from her job to come back to California to spend additional time with her daughters. (On Schedule J Debtor listed on dependents, and the court infers that the daughters are independent adults.) Debtor states there was also another death in her extended family and had to travel to Philadelphia for the funeral. Debtor also states that she did not qualify for CalPERS surviving spouse pension because she could not prove that her husband was disabled up to the time a year before his death. Debtor is attempting to appeal. If there is no pension availability, Debtor has a right to a refund of contributions, plus interest, in the approximate amount of \$75,000.00.

Debtor states that she has returned to work and has continued to make timely payments. The Debtor states that "[w]hile it is reasonable to possibly look at this matter again, once the pension determination is finally made, to review whether the plan still represents [Debtor's] best effort, there is no reason, given the availability of life insurance proceeds and retirement funds, not to give [Debtor] the opportunity to attempt to complete her plan." Dckt. 74.

DISCUSSION

The Trustee's first objection argues that the Debtor's case is in the wrong venue, because she is currently living in Colorado and based on her current residency she does not fall within 28 U.S.C. § 1391. The court addressed this issue in connection with the Chapter 13 Trustee's motion to dismiss the case. The court determined that venue is proper in the Eastern District of California. The court's findings of fact and conclusions of law are stated in the Civil Minutes for the February 18, 2015 hearing on the Chapter 13 Trustee's motion to dismiss this case.

The court overruled this objection to confirmation.

As to the Trustee's second objection, the court is not persuaded as to the fact that the Debtor's attorney is trying to exclude required services, such as relief from stay actions. Based on the language of the Disclosure of the Disclosure of Compensation of Attorney for Debtors (Dckt. 8, pg 35), it appears that the Debtor was attempting to exclude adversary proceedings, and not general relief from stay defense. Reading the sentence in its entirety, the court takes the exclusion to be for adversary proceedings which are not required under the no look provisions of Local Bankr. R. 2016-1(c). The failure to check a box on section 2.06 on the proposed plan is more akin to a scrivener's error which can be corrected in the order confirming, especially in light of the fact the Debtor provides for an amount of the fees to be paid

through the plan.

While well taken, the court will not deny confirmation on this attorneys' fee issue. The court is confident that Debtor's counsel will adjust his office's practices and take advantage of the information provided by the Chapter 13 Trustee in connection with this objection.

Grounds for Denying Confirmation

The Trustee's remaining objections, however, are well-taken. A review of Schedule I shows that the Debtor listed this "anticipated" income of \$500.00. Given the speculative nature of the income as well as the fact the Debtor has not provided any evidence to support that the \$500.00 will actually be received, the feasibility of the Debtor being able to make plan payment is questionable.

As to the life insurance benefits, the Debtor has not provided any explanation of where those funds have gone or why they are not being provided for in the plan. With the Debtor proposing to pay 0% to unsecured creditors and having nearly \$180,000.00 in life insurance benefits from the unfortunate passing of Debtor's husband, it appears that the plan may not be the Debtor's best efforts as required under 11 U.S.C. § 1325(b).

Lastly, given the unknowns over certain monies, particularly the \$10,000.00 lump sum as well as the insurance proceeds, the court is unable to determine if the unsecured claims would receive what they would under a hypothetical Chapter 7. There is conflicting information listed on the schedules as compared to what the Debtor testified to at the First Meeting of Creditors.

The Debtor's late-filed opposition does little to clarify this information. The Debtor once again does not provide real numbers of where the funds have gone or what has actually been received. The Debtor requests that the court "give the Debtor a shot" without having provided the court with actual amounts from the pension plan nor life insurance plans nor inheritance. The Debtor is basing the entire plan and ability to pay on what may be and not what the Debtor's financial reality actually is currently. While the court is sympathetic to the emotional and physical strain losing loved ones has on an individual, the Debtor has failed to provide evidence that the proposed plan is, in fact, the Debtor's best effort.

Debtor intimates that some of the transfers made by her late husband may be recoverable for the Debtor, estate, and creditors, no efforts are made to recover such assets. Even if Debtor to engage the services of a knowledgeable collection attorney or collection agency on a contingent fee basis, recovering a percentage of something for the estate is better than having 100% of nothing.

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

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

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

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

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

2. [10-27102](#)-E-13 FILIBERTO/JENNIFER
CYB-2 CASILLAS
Candace Y. Brooks

MOTION FOR SUBSTITUTION BY
FILIBERTO CASILLAS AS
SUCCESSOR-IN-INTEREST TO
JENNIFER CASILLAS
3-20-15 [[74](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 20, 2015. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

The Motion to Substitute is denied without prejudice.
--

Joint Debtor, Filberto Casillas, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Jennifer Casillas. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtors filed for relief under Chapter 13 on March 22, 2010. On

September 20, 2010 the debtor's First Amended Chapter 13 Plan was confirmed. On August 31, 2010, the debtor passed away. FN.1. The Joint Debtor asserts that he is the lawful successor and representative of the Debtor.

FN.1. The Debtor in his Declaration states that Joint Debtor Jennifer Casillas passed away on September 10, 2010. Dckt. 76. However, a review of the attached Certificate of Death states that the date of death was August 31, 2010. Dckt. 77. It appears that the Debtor accidentally confused the date of death with the date the Certificate of Death was issued, which was September 10, 2010.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on March 20, 2015. Dckt. No 74. Joint Debtor is the spouse of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on April 2, 2015. Dckt. 79. The Trustee states that the Debtor did not disclose if any life insurance proceeds were received due to the death of Joint Debtor Jennifer Casillas. The Trustee points out that no life insurance was disclosed on Schedule B and C nor were there any life insurance expenses listed on the amended Schedules I and J.

The Trustee also argues that the Debtor failed to explain why the instant Motion was filed more than four years after Joint Debtor Jennifer Casillas passed away. The Trustee points out that the declaration in support of the Motion for Confirmation filed September 20, 2010 includes the electronic signature of Joint Debtor Jennifer Casillas, dated August 24, 2010.

The Trustee lastly states that the Debtor does not address if there have been significant changes in the budget or expenses after the death of the Joint Debtor. The Trustee does not believe there were significant changes, however.

Response Filed By Debtor

On April 9, 2015, Debtor filed several pleadings in response. The first is the Declaration of Filberto Casillas, Dckt. 82. In it he testifies,

- A. The Deceased Debtor did not have any life insurance.
- B. Since the passing of the Deceased Debtor, the Surviving Debtor did not "[h]ave any significant changes in my expenses/budget."
- C. Since the passing of the Deceased Debtor, the Surviving Debtor has not been able to operate the business on his own, is paying another person a salary of \$1,500.00 a month, and the Surviving Debtor is receiving \$2,000.00 a month in Social Security benefits.

- D. The Surviving Debtor is uncertain about when he advised his attorney of the passing of the Deceased Debtor.
- E. The Surviving Debtor discloses communications with his attorney in which it is purported that documents signed by his wife have been misplaced and cannot be presented to the court.

DISCUSSION

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

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

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

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of

subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

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

Here, the court is concerned about why it has taken nearly five years for the Debtor to file a Suggestion of Death as well as the instant Motion. The Debtor does not provide an explanation as to why there has been such a delay in seeking the substitution, which raises concerns to the court as to whether or not the Debtor is able to represent the deceased Joint Debtor and whether it is, in fact, in the best interest of the parties to further administer the estate.

The Debtor, in his declaration, states "I have demonstrated that I can reasonable and timely prosecute actions needed to promote and proper administration of this case to conclusion." Dckt. 76, pg. 2, paragraph 8. However, by waiting nearly five years to file a Suggestion of Death and the instant Motion following the passing of the Joint Debtor suggests otherwise.

The court shares the same concerns as the Trustee's response and does not find that the Debtor has adequately shown that it is in the best interest of the parties for the case to continue nor that the Debtor is actually capable of representing the deceased Joint Debtor reasonably or timely.

Issues Relating to Confirmation of Plan and Information Provided by Debtor

This bankruptcy case was filed on March 22, 2010. The Amended Plan was filed on September 20, 2010, twenty days after the Deceased Debtor passed away. That Amended Plan purports to be signed by the Deceased Debtor. While counsel contends that the Amended Plan (the original of which cannot be produced) was signed by the Deceased Debtor before she died, counsel and the Surviving Debtor offer no authority for the proposition that the dead can file pleadings so long as an attorney got them to sign it before they died. As of the filing of the Amended Plan, the Deceased Debtor, as an individual in this case, had ceased to exist.

Further, counsel and the Surviving Debtor state that the Deceased Debtor "testified" in support of confirmation because she signed the declaration (the original of which cannot be produced) before she died. No authority is provided for the proposition that the Deceased Debtor can give testimony after she has died merely because counsel and the Surviving Debtor state that she signed a declaration before she died. (While the prior testimony of a deceased witness may be admitted under certain grounds, no authority under the Federal Rules of Evidence is provided by the Surviving Debtor.)

The Surviving Debtor testifies under penalty of perjury that "Since the passing of my wife, I have not had any significant changes in my expenses/budget." Declaration ¶ 4, Dckt. 82. He then further states that he has not been able to work on his business (from which pre-passing he generated income), now has to pay someone (unidentified) \$1,500.00 a month to work at the business, and is receiving \$2,000.00 in Social Security benefits. This are all significant changes in income. Further, the personal expenses have been reduced so as to exist for only one debtor, not two. This is a significant change in expenses.

The Surviving Debtor and counsel obtained confirmation of the plan with the court, creditors, and Chapter 13 Trustee relying upon the information provided in the Schedules under penalty of perjury. On Amended Schedule I the Surviving Debtor and Deceased Debtor stated under penalty of perjury that they had income from their business of \$16,000.00 a month. Dckt. 45 at 7. The Surviving Debtor and Deceased Debtor had monthly expenses of \$15,545.00 a month, which included \$12,800.00 in business expenses. No provision is made for the payment of any taxes on Amended Schedule J. *Id.* at 8-10. On this Amended Schedule J the Surviving Debtor and Deceased Debtor stated under penalty of perjury that for their family of four, including two minor sons, their food expense was only \$450.00 a month.

On September 20, 2010, after the passing of the Deceased Debtor, an amended Schedule J was filed decreasing the monthly expenses to \$15,440.00. Though deceased, the Amended Schedule was filed purporting to have been signed by the Deceased Debtor. The Amendment Cover Sheet dated August 25, 2010. Dckt. 56.

During the entire term of this Plan, the Surviving Debtor has operated under, and obtained confirmation of the Plan, based upon inaccurate and untruthful financial information. Only now, to get his discharge, does the Surviving Debtor come forward to advise the court, creditors, and Chapter 13 Trustee that there has been only one debtor during the five years of this plan.

The Surviving Debtor has deprived the Chapter 13 Trustee and creditors of any ability to consider the actual finances of the Surviving Debtor and what should be paid as part of any properly confirmable plan in this case.

The court further notes that the Surviving Debtor has been careful to avoid providing any actual, accurate financial information. Rather, he merely states that he can't work at the business, has to pay somebody else to run the business, and that nobody should question his conclusions that the changes in income and expenses do not need to be explained.

While the court has great sympathy and compassion for the Surviving Debtor and the two children who have lost their mother, this case is being presented to the court as a *fait accompli*, don't ask any questions, you don't get any accurate (or timely) information, just sign the order because the Surviving Debtor tells you to. The court cannot operate under such conditions.

Therefore, the Motion is denied without prejudice. This will afford the Surviving Debtor and counsel to assemble all of the necessary financial information and present the court with a credible case in which it can be determined that the bankruptcy has not been a fraud on the court and creditors.

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

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

The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

3. [10-38904-E-13](#) DONALD/JACQUELINE HEDRICK MOTION TO MODIFY PLAN
DBJ-4 Douglas B. Jacobs 2-12-15 [[66](#)]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 12, 2015. By the court's calculation, 61 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.

Donald and Jacqueline Hedrick ("Debtors") filed the instant Motion to Confirm the Modified Plan on February 12, 2015. Dckt. 66.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 83. The Trustee objects on the following grounds:

1. Debtor's modified plan does not authorize payments. Section 6.01 of the Debtors' proposed modified plan authorizes payments to unsecured creditors through July 2014. However, the proposed plan was filed February 2015, where the Trustee has disbursed after that date based on the confirmed plan. The proposed plan seeks to reduce the percentage to unsecured creditors from 7.07% to 0% where the Trustee has disbursed approximately 19% through February 2015.

2. The Trustee is uncertain of the plan payment proposed. Section 6;.01 proposes a plan payment of \$52,833.53 total paid in through October 2, 2014, then \$810.00 per month beginning October 25, 2014. Debtors' Declaration states that there is \$822.00 for plan payments and Debtors' Supplemental Schedules I and J reflect a monthly net income of \$821.72.
3. The Debtors filed a supplement to the Motion on March 16, 2015 after the court in the civil minutes for the Motion to Dismiss ordered the Debtors to file and serve a supplement to the instant Motion due to the failure to allege the grounds for confirmation. Dckt. 74. The Trustee states that he has no opposition to the late-filed supplemental motion based on timeliness.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objection on April 7, 2015. Dckt. 86. The Debtors state that they would be willing to submit an order confirming the plan specifying on-going payments in the amount of \$810.00 per month.

DISCUSSION

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

The Trustee's objections are well-taken. It appears that the proposed plan does not authorize the Trustee's prior disbursements of 19% to unsecured creditors nor does it clearly state the proposed monthly plan payments.

However, these are issues that may be corrected in the order confirming the plan. The Debtors, as stated in their response, can correctly state in the order that the monthly plan payments are to be \$810.00 per month and that the Trustee was authorized to disburse the 19% to unsecured creditors through February 2015.

As to the concern of the late filed supplements to the Motion, the Debtors declaration states that the late filing was due to the Debtors' attorney misreading the court's order in the civil minutes order for the Motion to Dismiss. While the court emphasizes the importance of court-ordered deadlines, the delay in filing did not prejudice the parties and is waived.

Therefore, after the Debtors correct the monthly plan payments and authorize the Trustee to disburse 19% to unsecured creditors through February 2015 in the order confirming, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 12, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the monthly plan payments to be \$810.00 per month and authorizing the Trustee to disburse 19% to unsecured creditors through February 2015, 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. [10-38904-E-13](#) DONALD/JACQUELINE HEDRICK CONTINUED MOTION TO DISMISS
DPC-1 Douglas B. Jacobs CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
1-21-15 [[56](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's decision is to deny the Motion to Dismiss without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,243.12 delinquent in plan payments, which represents multiple months of the \$1,128.62 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Donald and Jacqueline Hedrick ("Debtors") filed a reply to the instant Motion on February 2, 2015. Dckt. 64.

The Debtors state that the reason for the delinquency is due to the fact that Debtors were paying under the terms of a proposed modified plan that was denied due to the fact that it relied on a stipulation that had not been approved. The Debtors state that they have filed a Motion to Approve Stipulation (Dckt. 60) and will file a new motion to modify once that order is entered. The Debtors state that they will cure the arrears by the time of the hearing.

FEBRUARY 18, 2015 HEARING

At the hearing, the continued the hearing on the Motion to Dismiss to 3:00 p.m. on April 14, 2015, to be conducted in conjunction with the hearing on the motion to confirm the modified plan. Dckt. 72. The court further ordered that the Debtors shall, on or before February 28, 2015, file and serve on the Chapter 13 Trustee and U.S. Trustee a Supplement to the Motion (not an amended motion) which shall state with particularity the grounds upon which the Debtors assert that confirmation of the modified plan is proper under 11 U.S.C. §§ 1329, 1325, and 1322.

DISCUSSION

The court granted the Motion to Confirm the Plain on April 14, 2015. The now-confirmed plan, after the corrections discussed, adequately provides for the delinquency and cures the defaults.

Therefore, the Motion to Dismiss is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

5. [10-44204-E-13](#) IRMA SANCHEZ
MOH-5 Michael O'Dowd Hays

MOTION TO MODIFY PLAN AND/OR
MOTION FOR ENTRY OF DISCHARGE
3-3-15 [[73](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The court's decision is to deny the Motion to Modify the Confirmed Plan.

Irma Sanchez ("Debtor") filed the instant Motion to Modify her Confirmed Chapter 13 Plan on March 3, 2015. Dckt. 73. The Debtor requests that the court conclude the case with \$19,159.00 having been paid into the plan. The Debtor states this is justified because the decrease in earnings limited her ability to make the ongoing \$391.00 plan payment.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 78. The Trustee objects on the following grounds:

1. The Motion does not comply with applicable law because it is seeking multiple forms of relief and it does not cite

applicable code sections. Namely, the Trustee points out that the Debtor does not cite 11 U.S.C. § 1329, which is required under Local Bankr. R. 9014-1(d), and Fed. R. Bankr. P. 9013 for a plan modification or 11 U.S.C. § 1328(b) for hardship discharge.

2. The Debtor has not filed a proposed plan with the court as required by Local Bankr. R. 3015-1(d)(2).
3. The Debtor has not filed supplemental Schedules I and J.

DISCUSSION

First, the court addresses the Trustee's objection that the Debtor has failed to comply with Local Bankr. R. 3014-1(d)(2). The Debtor attempts to frame the Motion as one to amend a confirmed plan. The Debtor is, in fact, asking the court to confirm a modified plan to reduce the plan term. The Debtor improperly requests that the court amend an already confirmed plan. The proper procedure to change the terms of a confirmed plan is to file a modified plan and then seek confirmation of the modified plan. As such, the Debtor has failed to attach a proposed modified plan for the court to confirm. Therefore, on this independent ground, the court denies the Motion.

However, even if the Debtor filed a proposed modified plan shortening the plan term, the Debtor would not have fully paid the secured claim of National Auto Finance.

The Debtor argues that she was in a 60 month plan to pay the \$9,625.00 value portion of National Auto Finance at 6% interest and no less than a 1% dividend to unsecured creditors, plus the Trustee's and her attorney's compensation. The Debtor argues that obligation has been satisfied in less than 60 months because the amount of unsecured claims came to \$11,579.25 instead of the estimate of \$56,619.00.

On December 7, 2010, the court granted a Motion to Value the Collateral of National Auto Finance and valued the secured claim at \$9,625.00. The confirmed plan provides for National Auto Finance as a Class 2 claimant with a monthly dividend payment of \$186.00.

Running an amortization of the \$9,625.00 secured portion of National Auto Finance at 6% interest rate over a 60 month period calculates that a monthly payment of \$186.06 would need to be paid to satisfy the claim. If the plan were to be completed at this point, which would be in month 54, in order for the full secured claim to be paid, the monthly dividend would need to be \$203.83.

The Debtor seems to be confusing the means in which the Trustee disburses plan payments to creditors under a confirmed plan. Namely, the Debtor implicitly seems to suggest that because the unsecured claims came in substantially less, the Trustee was able to satisfy the 1% minimum dividend to unsecured creditors first and then use the remaining excess funds to go to the secured creditors. This is not how the Trustee disburses funds. The Trustee is only permitted to provide a monthly dividend in the amount listed in the plan - for purposes of National Auto Finance, that would be \$186.00 per month. Any excess funds would then be applied to the general unsecured which is why the

dividend percentage for Class 7 claims is "no less than" 1% since it could be more if more funds are available.

Therefore, the Debtor could not have possibly satisfied the secured claim of Class 2 claimant National Auto Finance prior to the completion of the plan's total 60 month term. If the plan were to end currently, the Debtor could be responsible for the full claim amount of National Auto Finance in the amount of \$18,863.00 since the closing of the case without paying the secured value as determined by the court would revert the full liability of the claim back to the Debtor.

This analysis assumes that Debtor had, in fact, made all plan payments to date. However, as noted by the Trustee in the pending Motion to Dismiss, the Debtor is delinquent in the amount of \$1,173.00, which represents multiple months of plan payments (\$391.00 per month).

Furthermore, even again assuming that it was possible for the court to amend the terms of a confirmed plan without a proposed modified plan being filed, the Debtor has not filed any supplemental schedules to reflect the Debtor's current financial reality to determine if any modification to the confirmed plan is feasible or viable. The only Schedules I and J filed by the Debtor are from September 15, 2010. Dckt. 11. The Debtor provides an extensive narrative in the Motion concerning changed circumstances (loss of employment, medical procedures, moves, etc), but has not filed supplemental Schedules.

Therefore, the Motion is denied without prejudice.

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

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

The Motion to 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 is denied without prejudice.

6. [10-44204-E-13](#) IRMA SANCHEZ
DPC-2 Michael O'Dowd Hays

CONTINUED MOTION TO DISMISS
CASE FOR FAILURE TO MAKE PLAN
PAYMENTS
1-21-15 [[58](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on June 24, 2015.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 58.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$782.00 delinquent in plan payments, which represents multiple months of the \$391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Irma Sanchez ("Debtor") filed a reply to the instant Motion on February 3, 2015. Dckt.62. Debtor replies as follows:

Debtor's confirmed Chapter 13 plan called for monthly payments of \$391.00 for 60 months to pay the \$9,625.00 value portion of the \$18,863.00 claim of National Auto Finance and 1% of her unsecured claims which were estimated to total \$56,619.00. The \$9,625.00 claim is being paid with 6% interest with a monthly dividend of \$186.00 and a total of \$11,16000 would have

been paid at \$186.00 monthly. The Debtor's plan also calls for payment of \$2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor asserts that she has been paying "more" than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to \$11,579.35, thereby resulting in the creditors who chose to act diligently and enforce their rights receiving more than the minimum 1% which was required of the Debtor. Additionally, the creditors who have acted diligently to assert their claims also benefit from the Chapter 13 Trustee's fee being computed on a lower 5.2% than originally projected by Debtor.

The Debtor asserts that a review of the "Case Profile" shows that the car creditor has actually been paid thru January 26, 2015 a total of \$14,752.38 which is in excess of the \$11,160.00 called for in the plan. No explanation has been provided for this overdisbursement to the car creditor and apparent underdisbursement to the creditors holding general unsecured claims. The court notes however that the Debtor does not explain what this "Case Profile" is nor does the Debtor provide for authenticated evidence supporting the claim.

Debtor asserts that it should not be necessary for the Debtor to propose and confirm an amended or modified plan when she has paid a sufficient amount to satisfy the requirements of her confirmed plan and she is not required to be in a plan of 60 month duration. If the court finds that a modified plan is necessary, the Debtor requests fourteen days to do so.

TRUSTEE'S REPLY

The Trustee filed a reply on February 10, 2015. Dckt. 65. The Trustee states the following:

1. The Debtor's confirmed plan calls for payments in the amount of \$391.00 for 60 months with "no less than 1%" to the general unsecured creditors. Dckt. 10.
2. Debtor is currently delinquent in the amount of \$1,173.00.
3. January was month 52. A total of \$20,332.00 has come due through January 25, 2015. To date, Debtor has paid in a total of \$19,159.00 with last payment of \$391.00 on November 13, 2014.
4. The Trustee has review the confirmed plan and it states in Class 7, general unsecured claims are to be paid no less than 1% with no additional provision in the plan that would alter this treatment.
5. The Trustee has reviewed the order confirming the plan (Dckt. 50) and there is no language included that would alter this treatment.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing to April 1, 2015, to

allow counsel to meet with his client and determine whether it is in the Debtor's best interests to (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge. Dckt. 83

DISCUSSION

The Motion to Modify the Confirmed Plan (Dckt. 83) was denied on April 14, 2015.

A review of the case shows that the Debtor remains delinquent. The Debtor is \$1,173.00 delinquent in plan payments, which represents multiple months of the \$391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, it appears that Debtor may well want to propose a modified plan and have the court confirm that modified plan. Rather than dismissing the case and having Debtor lose the benefit of the prior orders in this court and performing for four years in this case.

The court continues the hearing to allow Debtor to file a proposed modified plan and motion to confirm, or a separate motion seeking a hardship discharge if Debtor and her counsel conclude that such relief would protect the Debtor's interest in the Class 2 payments to the car creditor and other orders issued in this case.

7. [09-45405](#)-E-13 SAM/ANGELA CRUZ
CAH-1 Michael O'Dowd Hays

MOTION TO SELL
3-17-15 [[103](#)]

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Sell Property is granted.
--

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

A. 7490 Callaway Drive, Rancho Murieta, California

The proposed purchaser of the Property is Shannon Marie Felmley-Krist and the terms of the sale are:

1. Purchase Price is \$335,000.00
2. Debtors will not be receiving any money from the short sale.
3. All costs of sale, such as escrow fees, title insurance, and

4. Sale is all cash.

CREDITOR'S NON-OPPOSITION

Wilmington Trust, NA, successor trustee to Citibank, N.A., as Trustee, for the benefit of registered holders of Structured Asset Mortgage Investments II Trust 2007-AR3, Mortgage Pass-Through Certificates, Series 2007-AR3 ("Creditor") filed a conditional non-opposition to the instant Motion on March 31, 2015. Dckt. 113.

The Creditor states that the non-opposition is contingent on its secured claim being paid off in full or in accordance with any approval as authorized by the Creditor. The Creditor also states that the non-opposition is contingent on the Movant fulfilling all conditions and timelines as laid out in a short sale approval letter.

The Creditor states that, in the event the sale of the Property does not take place, Creditor shall retain its lien for the full amount due under the loan.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed a non-opposition on April 6, 2015.

DISCUSSION

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

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

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

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

The Motion to Sell Property filed by Sam and Angela Cruz the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Sam and Angela Cruz, the Chapter 13 Debtors, are authorized to sell pursuant to 11 U.S.C. § 363(b) to Shannon Marie Felmley-Krist or nominee ("Buyer"), the Property commonly known as 7490 Callaway Drive, Rancho Murieta, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$335,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 106, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

Tentative Ruling: The Motion for Disbursement 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

The Motion for Disbursement is denied.

Corina Garcia ("Debtor") filed the instant Motion for Disbursement on March 25, 2015. Dckt. 58. The Debtor seeks authorization for the insurance proceeds in the amount of \$8,770.64 to be released and disbursed to Capital One Auto Finance to be applied to Debtor's account.

The Debtor states that on August 9, 2014, the Debtor's 2003 Acura MDX ("Vehicle") was involved in a collision and was totaled. The insurance proceeds were paid directly to the Chapter 13 Trustee as the Class 2 claim of Pacific Service Credit Union had already been paid in full through the Chapter 13 Plan.

On March 4, 2015, the court granted the Debtor's Motion to Use Cash Collateral which authorized Debtor to use the remaining insurance proceeds of \$8,770.64 to procure a replacement vehicle. Dckt. 55.

Debtor states that Debtor's roommate, Brady Stewart, financed a 2012 Honda Civic on her behalf to allow a lower interest rate since Debtor is in bankruptcy. The agreement between Debtor and Mr. Stewart was that Debtor would be responsible for all payments under the loan agreement to the finance company, Capital One Auto Finance. Declaration of Brady Stewart, Dckt. 61.

The amount financed with Capital One Auto Finance was \$16,223.50 at 18.18% interest. Exhibit A, Dckt. 67. The monthly payments are \$374.49. Exhibit B, Dckt. 67.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on March 30, 2015.

DISCUSSION

A review of the Motion and the accompanying declarations all show that the Debtor entered into an agreement with the Debtor's roommate, Mr. Stewart, for him to secure a vehicle for the Debtor since she was in a bankruptcy. However, the Debtor does not provide any evidence as to the efforts of the Debtor to secure a vehicle on her own or whether there was an effort to secure financing with lower interest rate.

This Motion is troubling on several grounds. First, the Debtor has taken it onto herself to procure post-petition credit without obtaining court authorization.

Second, she has done so to obtain credit with the outrageous, unreasonable, unconscionable interest rate of 18.18%.

Third, the Debtor has done this to purchase a vehicle with a cash price of \$13,491.00 but has become obligated to pay \$16,223.50 as the purchase price, for which there will be \$10,739.78 in finance charges due to the \$18.18% interest rate.

Fourth, the contract provides for purchasing a Service Contract for \$1,495.00, while Debtor's expenses include \$325.00 for fuel and maintenance expenses. Exhibit 3, Dckt. 67. In her prior Amended Schedule J, while driving her older car and paying higher gas prices, and not having a maintenance contract, Debtor stated under penalty of perjury that her monthly expenses for fuel and maintenance were only \$300.00. Dckt. 13. This \$300.00 amount was what was stated under penalty of perjury on the original Schedule J. Dckt. 1 at 31. Debtor's card, which has now been replaced with a 2012 model, was a 2003 Acura MDX, with 126,594 miles on it - clearly a vehicle with a much higher maintenance expense than the 2012 Honda Civic.

Fifth, Debtor seeks to have this court retroactively approve the post-petition financing for a vehicle which will require a \$374.00 a month payment. Debtor could have taken the \$8,770.64 in insurance proceeds and purchased a more modest, reasonably priced vehicle which did not require \$374.00 a month payments, with 18.18% interest. The Debtor would then have had disposable income to fund a plan and provide for some reasonable payment to creditors holding general unsecured claims. The court does not concur with Debtor in contending that increasing the unsecured dividend from 0.00% (0.00) to 0.98% (0.0098) represents a significant benefit to creditors from the 18.18% financing cost.

Sixth, Debtor has not sought to obtain authorization for post-petition credit, carefully skirting that requirement by having her roommate obtain the credit in his name and then the Debtor being obligated to make all the payments. This is a thinly veiled attempt to mislead the court as to the substance of what the Debtor has done in this case.

Seventh, Debtor has demonstrated that she can well afford to make payments of \$374.00 a month to her roommate for the credit, electing not to use the \$8,770.64 for a vehicle.

At the end of the day, Debtor's Motion is a statement that the Bankruptcy Code and Bankruptcy Rules do not apply, that she will obtain credit, trade vehicles, and do whatever she so desires, and the court, Chapter 13 Trustee, and U.S. Trustee are mere afterthoughts, irrelevant to the process.

Therefore, the Motion is denied.

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

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

The Motion for Disbursement 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.

RHS CALL

9. [13-32506](#)-E-13 RICHARD EADDY
RJ-1 L. Jare

MOTION TO AVOID LIEN OF CACH,
LLC
3-31-15 [[30](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 31, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of CACH LLC ("Creditor") against property of Richard Eric Eaddy ("Debtor") commonly known as 8205 Weyburn Court, Sacramento, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,152.32. An abstract of judgment was recorded with Sacramento County on August 16, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an

approximate value of \$155,000.00 as of the date of the petition. The unavoidable consensual liens total \$154,302.50 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$698.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of CACH LLC, California Superior Court for Sacramento County Case No. 34-2012-00127901, recorded on August 16, 2013, Book 20130816 and Page 0978 with the Sacramento County Recorder, against the real property commonly known as 8205 Weyburn Court, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

10. 15-20709-E-13 TIMOTHY/MARY SULLIVAN
DPC-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-11-15 [[20](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

11. [15-20810](#)-E-13 VASILIIY/YELENA KUMANSKIY
MLA-1 Mitchell L. Abdallah

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA COMPANY HOME
LOANS SERVICING
3-20-15 [[21](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee,, parties requesting special notice, and Office of the United States Trustee on March 20, 2015. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

-----.

The Motion to Value secured claim of Bank of America Company Home Loan Servicing ("Creditor") is denied without prejudice
--

The Motion to Value filed by Vasiliy Kumanskiy and Yelena Kumanskiy ("Debtors") to value the secured claim of Bank of America Company Home Loans Servicing ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6565 Thalia Way, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of \$295,000.00 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 Motion names the creditor whose secured claim is to be valued as being Bank of America Company Home Loan Servicing. On the Certificate of Service, this entity is stated to have been served at the following addresses:

BAC Home Loans Servicing
Agent for Service of Process: CT Corporation System
818 West Seventh Street, 2nd Floor
Los Angeles, CA 90017

BAC Home Loans Servicing
450 American Street
Simi Valley, CA 93065

BAC Home Loans Servicing
Brian T. Moynihan, President and CEO
100 North Tyron Street
Charlotte, NC 28255

Certificate of Service, Dckt. 24.

However, no such entity as Bank of America Home Loans Servicing exists. The California Secretary of State reports that an entity with the name BAC Home Loans Servicing, LP had its status to do business in the State of California cancelled. <http://kepler.sos.ca.gov/>. Through other cases, this court is aware that BAC Home Loans Servicing, LP was merged into Bank of America, N.A. in 2011. Texas Secretary of State, Certificate of Merger, dated June 28, 2011.

The Motion as presented to the court is against a creditor who does not exist, and for whom no enforceable order may be entered. This fails to meet the fundamental Constitutional requirements that federal judicial power is to be exercised only when there are real parties in interest who have an actual case or controversy between them before the court. U.S. Const. Art. III, Sec. 2.

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 Vasiliy Kumanskiy and Yelena Kumanskiy ("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.

12. [15-20810](#)-E-13 VASILIIY/YELENA KUMANSKIY
DPC-1 Mitchell L. Abdallah

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-17-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor on March 17, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor cannot afford to make the payments or comply with the plan because the Debtors' plan relies on a Motion to Value Collateral of BAC Home Loans Servicing.
2. The plan is not the Debtors' best efforts. The Debtors claim inappropriate deductions. On Form 22C, the Debtors list \$2,305.10 for taxes which appears to be double the amount listed on Debtors' schedule I, # 51 (\$741.70 and \$410.85). Also the Debtors on Line 18 list life insurance in the amount of \$242.00 when on Schedule I, it is listed as an expense of \$42.00. The Monthly Disposable Income should be \$1,352.55 and not <\$1,302.81>.

3. The plan is not the Debtors' best efforts because it does not report all of the Debtors' income. The Debtors' Statement of Financial Affairs report a joint tax refund for 2014 in the amount of \$5,805.00. The Debtors received a federal refund of \$5,215.00 for tax year 2013 and \$4,263.00 for 2012. No future tax refund is projected on Schedule I. Based on the previous tax years, the Trustee states that it appears that the Debtors will be able to claim the same deductions and that any future refunds would be similar. Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.

DISCUSSION

As to the Trustee's first objection, the Debtors' filed a Motion to Value Collateral of Bank of America Company Home Loans Servicing which was denied without prejudice.

The Trustee's remaining objections are also well-taken. The Debtors' Form 22C seems to miscalculate the proper tax deductions and life insurance expenses which led to an improper calculation of disposable income. A comparison of Form 22C with Schedule I shows the discrepancy. Without the Debtors' Form 22c accurately reflecting the Debtors' financial reality and properly calculating the Debtors' disposable income for determining proper monthly plan payments, the court cannot determine if the Debtors can afford to make the proposed plan payments or even if those payments are proper.

Additionally, the failure of the Debtors to provide for future tax refunds raises concerns if the information provided in the schedules as well as Form 22C is an accurate reflection of the Debtors' financial reality. Without the plan and schedules reflecting the tax refund income, the court cannot confirm the plan.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 3, 2015. By the court's calculation, 42 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.

Anthony and Gwendolyn Land ("Debtors") filed the instant Motion to Confirm Amended Plan on March 3, 2015. Dckt. 79.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 88. The Trustee objects on the following grounds:

1. The Trustee needs clarification as to the stream of the monthly plan payments. The proposed plan's additional provisions state that "Debtors have paid a total of \$2,570.00 to the Trustee through February 25, 2015. Commencing February 25, 2015 monthly plan payments shall be \$438.00 for the remainder of the plan." Dckt. 82, pg. 7. The Trustee believes that the Debtors mean to propose a total of payments of \$2,580.00 through and not including February 2015, and then \$438.00 per month thereafter.

2. The Debtors' budget does not support the plan payment of \$438.00. The Debtors' Supplemental Schedule I reduced their combined net income to \$3,802.42 due to the Debtors no longer receiving their OTIS income. Dckt. 78. The Debtors' supplemental Schedule J lists total expenses of \$3,476.01. Dckt. 59. The Trustee states that the monthly disposable income is estimated to be \$326.41 which is less than the proposed plan payments of \$438.00.

DISCUSSION

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

The Trustee's objections are well-taken. While the first objection appears to be a mere scrivener's error which could be corrected in the order confirming, the second objection raises concerns over the Debtors' ability to make the proposed plan payments. A review of the most recent Schedules I and J shows that the Debtors' disposable monthly income is, in fact, approximately \$110.00 lower than the proposed plan payments. The Debtors did not respond to the Trustee's objection with evidence of their ability to make the proposed plan payments in light of their monthly income being less than those payments. Without more, it appears that the Debtors cannot make the plan payments required under 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

14. 15-20119-E-13 GLENN/ROSEMARIE VILLALUNA MOTION TO CONFIRM PLAN
BMV-3 Bert M. Vega 2-17-15 [[50](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 56 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 17, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

15. 15-20520-E-13 MICHAEL HAGERTY
DPC-1 Pro se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-11-15 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) on March 11, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor is proposing plan payments of \$1,317.00 for 60 months, however the Debtor's monthly net income on Schedule J reflects \$106.00.

2. The Debtor's plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). The Debtor is under the median income and proposes plan payments of \$1,317.00 for 60 months while not proposing a dividend to unsecured creditors. The Debtor's Plan proposes to pay 10% interest to Class 1 Mortgage arrears to Seterus Inc. The provision for the interest rate is blank, therefore, according to § 2.08(a)(1) of the Chapter 13 Plan, 10% per year will accrue. The arrears are not entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.
3. The plan fails to provide a dividend to unsecured creditors.

DISCUSSION

The Trustee's objections are well-taken. A review of the Debtor's Schedule I and J shows that the Debtor has a monthly net income of \$106.17. The Debtor has not provided any evidence or explanation how he intends to make the \$1,317.00 proposed plan payments when his net monthly income is only \$106.17. Furthermore, the proposed plan improperly provides for interest on the mortgage arrears to Seterus Inc. While the Debtor may have inadvertently left the interest blank rather than putting "0.00%," the Chapter 13 Plan form provides for the default of 10% if left blank. The Debtor has not provided evidence that Seterus is entitled to interest pursuant to 11 U.S.C. § 1322(e). Without more, it appears as if the plan is not the Debtor's best efforts nor would the Debtor be able to afford the proposed plan payments.

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

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

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

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

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

16. [15-20620](#)-E-13 CAREY WHITE
APN-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
3-5-15 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 5, 2015. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Wells Fargo bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not provide for the full secured claim of the Creditor, as stated in the Creditor's Proof of Claim No. 1. FN.1.

FN.1. The Creditor's objection discusses proper valuation under 11 U.S.C. § 506(a) and the validity of the evidence provided for by the Debtor. However, for purposes of the instant Objection and the fact no Motion to Value is

pending, the crux of the Creditor's objection is the failure of the Debtor to provide for the Creditor's full secured claim in the proposed plan.

The Creditor's objections are well-taken. The plan states that the value of Creditor's interest in its collateral is \$16,000.00. However, a review of the claims register shows that the Creditor filed a Proof of Claim No. 9 on March 2, 2015, listing a secured claim of \$25,498.67.

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

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

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

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

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

Here, the Debtors have provided for the secured claim of the Creditor, just not in the full amount as required by 11 U.S.C. § 1325(a)(5). The Debtor has not filed a Motion to Value the secured claim of Creditor, and therefore, the Creditor's Proof of Claim No. 9 controls without a court order valuing the claim otherwise. Therefore, the Creditor's 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.

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

April 14, 2015 at 3:00 p.m.
- Page 42 of 140 -

1. The Debtor's plan relies on a Motion to Value the secured claims of Preferred Credit Inc. and Wachovia Dealer Services in Class 2. No such motions have yet to be filed and, therefore, the Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).
2. The Debtor does not appear to be able to make plan payments because the Debtor fails to list an expense on Schedule J for auto insurance when the Debtor disclosed an automobile on Schedule B.
3. The Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return for the most recent pre-petition tax year for which a return was required, or a written statement that no such documental exists.
4. The Debtor failed to appear at the First Meeting of Creditors held on March 5, 2015. The continued Meeting is scheduled for 10:30 a.m. on April 2, 2015.

The Trustee's objections are well-taken.

The Debtor has failed to file a Motion to Value for either the secured claims of Wachovia Dealer Services or Preferred Credit Inc. A review of the proposed plan reveals that the plan does rely on these motions. Since the Debtor has not filed any motions to value, the objection is sustained as the Debtor cannot make the payments without such.

As to the Trustee's second objection, the Debtor does fail to provide for an automobile insurance expense when the Debtor claims to own a vehicle. This necessary expense with any vehicle ownership brings up questions of whether the Debtor is disclosing all of his assets and expenses for the court to determine the viability and feasibility of the plan. The Debtor has not filed a response to the Trustee's objection. Without more, the Trustee's objection is sustained.

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These are necessary documents for the Trustee and the court to determine the financial reality of the Debtor and to determine if the Debtor's plan is feasible. Without this information, the court cannot confirm the plan.

The basis for the Trustee's fourth objection was that the Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1). The Trustee's Report for the continued Meeting of Creditors on April 2, 2015 states that the Debtor once again failed to appear. Therefore, the Trustee's objection is sustained.

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

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

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

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

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

18. [15-20620](#)-E-13 CAREY WHITE
EAT-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
3-12-15 [[23](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2015. By the court's calculation, 33 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.

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that:

1. The plan incorrectly reflects the sum of \$29,216.00 in pre-petition arrearages is due and owing when the Creditor alleges that the Debtor owes \$25,196.88 in pre-petition arrearages.
2. The plan understates the monthly mortgage payment as \$2,200.00 when it is meant to be \$2,597.25.
3. The proposed monthly plan payments will not fully amortize the allowed secured claim over the term proposed by the plan. The

provisions fail to disclose any other verifiable sources of funding to support the plan. The Debtor's net disposable income is insufficient to fund the plan.

Creditor's objections are well-taken.

The Creditor holds a deed of trust secured by the Debtor's residence. The Creditor asserts \$29,216.00 in pre-petition arrearages. The Plan does not propose to cure the full amount of arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Additionally, the plan does not provide for the full payment of the Creditor's post-petition monthly payment. Because it fails to provide for the full payment of arrearages and full monthly payment amount, the plan cannot be confirmed.

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

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank, N.A. 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.

19. [15-20821](#)-E-13 CHARLOTTE REYNOLDS
DPC-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-17-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 28 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 Trustee is not certain that the Debtor can make the payments under the plan, 11 U.S.C. § 1325(a)(6). The Trustee states that the Debtor appears to be over the median income. The plan calls for an extra payment of \$18,030.02 in months 59 and 60.

The Trustee notes that the Section 6 states that additional provisions are not appended but they, in fact, are appended to the Plan filed in this case (Dckt. 7). The Trustee also notes that the Debtor plans to sell or refinance the home to pay balloon payments at months 58 and 59 of plan.

The Trustee is not sure why the Debtor proposes to wait to sell or refinance the home in the last two months of the plan.

At the Meeting of Creditors, the Debtor testified that she is not on title to the real property commonly known as 2600 1st Street, Lincoln, California. Debtor testified that the property is her husbands and was acquired prior to their marriage.

The Trustee notes that the real property is listed on Schedule A and no creditor is listed on Schedule D or in the plan for the property. However, Schedule J does list an ongoing mortgage payment in the amount of \$1,845.00. Additionally, the Trustee notes that the Debtor's Schedule B lists two vehicles which are both encumbered but there are no creditors listed on Schedule D as to these vehicles. The Debtor's Schedule J lists an expense for two car payments.

The Trustee requests that confirmation be denied unless additional evidence is provided such as: (1) declaration on the part of the Debtor addressing their existing income from all sources; and (2) a declaration from the spouse addressing the spouse's income and the reason the plan defers the sale or encumbrance of the real property.

DEBTOR'S RESPONSE

The Debtor filed a response on April 2, 2015. Dckt. 21. The Debtor provides the following analysis on her average income:

1. \$993.00 per month from Debtor's job as a coffee roaster (works as an independent contractor for now)
2. \$140.00 a month working for Casque Wines (as an hourly employee)

The Debtor states that the reason the amount was lower the month before the First Meeting of Creditors is that Debtor's income fluctuates, and the amount she listed on Schedule I is an average. As to her husband's income, Debtor states that he grosses approximately \$6,623.17 per month from his job as a teacher with Western Placer Unified School District.

As to the real property, the Debtor reiterates that it is her husband's separate property and the loan is only in his name. As to the vehicles, the Debtor states that it is also in her husband's name alone and that is why they are not listed in the Plan or Schedule D.

As to the balloon payment, the Debtor is waiting to allow the property to appreciate which increases their chances of being able to refinance. It also gives the Debtor's husband time to build up his credit.

Debtor provides her declaration and her husband's in support. Dckt. 22 and 23.

DISCUSSION

A review of the Debtor's response does not adequately provides evidence and explanation to explain the reason for the balloon payments in the plan and

the lack of listing of a creditor as to the real property and the vehicles. The Debtor has stated that the loans as to the property and the vehicles are solely in the non-filing spouses name. But that does not prevent the property from being community property and property of the bankruptcy estate. 11 U.S.C. § 541(a)(2). Even if the non-debtor spouse's separate property, an issue arises as to whether the estate has the right to recover contribution from community assets (such as post-petition earnings) made to benefit one spouse's separate property.

Therefore, in light of the Debtor Response and evidence presented, the Trustee's objections are sustained.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

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

Richard and Alisa Young ("Debtors") filed the instant Motion to Confirm the Modified on February 17, 2015. Dckt. 56.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 62. The Trustee objects on the following grounds:

1. It appears that the Plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtors' non-exempt equity totals \$33,500.00 and the Debtors propose to pay the unsecured creditors 0% dividend. The Debtors are proposing total plan payments of \$30,200.00. Attorney fees paid through the plan total \$1,750.00. The Debtors' plan does not include any payments to secured creditors. \$28,450.00 is available for the Trustee fees and payments to unsecured creditors.

2. The Debtors incorrectly report the total paid into the plan. The Debtors have paid a total of \$25,850.00 to the Trustee as of January 27, 2015. The Debtors report \$24,720.00 paid in as of January 27, 2015.

DISCUSSION

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

The Trustee's objections are well-taken. While the second objection appears to be a mere scriveners' error, the Trustee's first objection is concerning. A review of the Debtors' proposed plan and their schedules, it shows that the Debtors may have excess non-exempt equity in property that could be used to provide for a disbursement to general unsecured creditors. The Debtors have not filed a response to the Trustee's objection explaining why the plan, which provides a 0% dividend to unsecured creditors, is viable and feasible when there is a large sum of non-exempt equity which could be applied to such. Without more, the Debtors appear to fail the liquidation analysis under 11 U.S.C. § 1325(a)(4) and the plan cannot be confirmed.

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

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

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

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

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

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 27, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. [09-44429](#)-E-13 KENNETH/MYCHELE RIDDICK
DPC-2 Mary Ellen Terranella

MOTION TO APPROVE SETTLEMENT
REGARDING LIFE INSURANCE
PROCEEDS O.S.T.
4-7-15 [[119](#)]

Tentative Ruling: The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(3).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2015. By the court's calculation, 7 days' notice was provided.

The Motion for Approval of Compromise was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion For Approval of Compromise is granted.
--

David Cusick, the Chapter 13 Trustee, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Kenneth and Mychele Riddick, the Chapter 13 Debtors, ("Settlor"). The claims and disputes to be resolved by the proposed settlement concern the claim of exemptions to life insurance proceeds in the amount of \$800,000.00 under California Code of Civil Procedure § 703.140(b)(11)(C).

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court:

- A. To allow \$90,000 of the insurance proceeds (11.4%) to be paid into the plan for the benefits of the creditors
- B. The remaining proceeds would go to the Settlers

DISCUSSION

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

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

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

Under the Settlement Movant shall recover \$90,000.00 in satisfaction of the estate's claim for recovery of the property, with an asserted value of \$800,000, from Settlor. Movant asserts that the property can be recovered for the estate and be applied to the benefit of the unsecured creditors, allowing them to receive an additional \$86,130.00, or approximately 30% of the claims, after the deduction of administrative expenses. This proposed settlement allows Movant to recover for the estate \$90,000.00 without further cost or expense and is 11.4% of the maximum amount of the claim identified by Movant.

Probability of Success

The Movant states that he cannot ascertain the likelihood of success in the underlying litigation because of the fact the decedent made approximately 50% of the household income and there are two young dependents.

Difficulties in Collection

Movant alleges that there would be substantial difficulty in collecting absent the settlement. The plan has been completed.

Expense, Inconvenience and Delay of Continued Litigation

Movant argues that given the underlying issues include definition of the estate in Chapter 13 and 7, vesting of the estate, activity in a case after a plan was completed, discovery involving the Debtor and two minors, the Movant believes sufficient complexities exist in the litigation that would otherwise be required.

Paramount Interest of Creditors

Movant argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation. In fact, it allows for a larger distribution to general unsecured creditors.

The court, after a review of the Motion and the circumstances surrounding the insurance proceeds and the complicated nature of the claim, finds that it is in the best interest of the Debtor, creditors, and the estate to approve the settlement. The terms of the settlement provides for the estate to get \$90,000.00 in funds to apply to the benefit of creditors while still providing a substantial funds for the Debtor and her two minor dependents following the death of her husband.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The 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 Approve Compromise filed by David Cusick, the Chapter 13 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between Movant and Kenneth and Mychele Riddick ("Settlor") is granted to resolve the Movant's objection to the claim of exemption in the \$800,000.00 of life insurance proceeds from the death of the co-Debtor in this case. \$90,000.00 of the insurance proceeds shall be first disbursed to the Chapter 13 Trustee, to be disbursed under the Chapter 13 Plan, and the remaining \$720,000.00 shall be disbursed to the Debtor, for which she has claimed an exemption pursuant to Cal. C.C.P. § 703.140(b)(11)(C).

The Chapter 13 Trustee shall lodge with the court an order dismissing the objection to claim of exemption, DCN: DPC-1, pursuant to the terms of the Stipulation approved by the court.

23. [09-44429](#)-E-13 KENNETH/MYCHELE RIDDICK OBJECTION TO DEBTORS' CLAIM OF
DPC-1 Mary Ellen Terranella EXEMPTIONS
2-25-15 [[114](#)]

Tentative Ruling: The Objection to Claim of Exemptions 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.

The Chapter 13 Trustee having filed a Notice of Settlement of Trustee's Objection to Exemption (dckt. 118) and the court construing this as a "Withdrawal" pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Objection to Debtors' Claim of Exemptions is overruled without prejudice, and the matter is removed from the calendar.**

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 Exemptions filed by the Chapter 13 Trustee having been presented to the court, the court having approved a settlement which resolved the issues presented in this Objection, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Motion to Incur Debt is denied without prejudice.

The motion seeks permission to purchase a 2012 Mercedes-Benz C250 with 26,514.00, which the total financing in the amount of \$18,000.00, with 72 monthly payments of \$371.00, with a final payment of \$314.57.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on March 25, 2015.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at 1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and

borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase a used luxury vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. The Debtor owned a 2009 Mini Cooper. When it was damaged, the insurance paid for 100% of the balance owed on it. The Debtor now seeks to borrow an additional \$18,000.00 to purchase luxury used vehicle. FN.1.

FN.1. While this is a "100% plan," it stretches the payment on \$1,611.00 of general unsecured claims and the \$24,392.33 arrearage on the claim secured by Debtors' home over sixty months - at 0.00% interest. The extraordinary relief available to debtors and the ability to carry interest free debt to pay delinquent obligations is inconsistent with the Debtors' desire to drive a late model luxury vehicle at the further expense of creditors.

Additionally, the Debtors failed to provide a copy of the finance agreement that lays out the specific terms of the financing agreement. Instead, the Debtor provides an email that outlines the basic terms of the potential finance agreement but does not provide a copy of the full agreement. Without a copy of the full agreement, the court cannot determine if its in the best interest of the estate, Debtors, or creditors.

Therefore, the motion is denied without prejudice.

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

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

The Motion to 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.

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by creditors. The Chapter 13 Trustee withdrew his objection on April 6, 2015 stating that the Debtor is now current in plan payments. Without any objections, 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 27, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

26. [14-31433](#)-E-13 JOSEPH/NANCY ATIS MOTION TO CONFIRM PLAN
DPR-1 David P. Ritzinger 2-19-15 [[22](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2015. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [14-31433](#)-E-13 JOSEPH/NANCY ATIS
DPR-2 David P. Ritzinger

MOTION TO VALUE COLLATERAL OF
ALLIANT CREDIT UNION
3-10-15 [[36](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on March 9, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Value secured claim of Alliant Credit Union("Creditor") is granted and the secured claim is determined to have a value of \$9,600.00.</p>

The Motion filed by Joseph and Nancy Atis ("Debtor") to value the secured claim of Alliant Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Toyota Corolla S Sedan 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,600.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a non-purchase-money loan incurred on March 26, 2013, to secure a debt owed to Creditor with a balance of approximately \$13,799.80. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$9,600.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Joseph and Nancy Atis ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Alliant Credit Union ("Creditor") secured by an asset described as 2009 Toyota Corolla S Sedan 4D("Vehicle") is determined to be a secured claim in the amount of \$9,600.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$9,600.00 and is encumbered by liens securing claims which exceed the value of the asset.

28. [11-29034](#)-E-13 DOUGLAS/ELIZABETH EDWARDS MOTION TO SELL
PGM-8 Peter G. Macaluso 3-10-15 [[150](#)]

No Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Sell Property is xxxxxxxxxx.
--

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

A. 2065 Archer Circle, Rocklin, California

The proposed purchaser of the Property is Alan Kahong Chan and Hong Lei Yu ("Buyers") and the terms of the sale are sale price of \$355,000.00. The proposed sale is a short sale. Wells Fargo Bank, who holds both the first and second deeds of trust, consent to the short sale. Debtors anticipate receiving \$10,000.00 from this sale, to be used for moving expenses and to secure a new residence.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on March 18, 2015. Dckt. 156. The Trustee states that he has no objection to the Motion. The Trustee notes that the Motion does not clarify if the remaining of the allowed unsecured debt for Wells Fargo Bank will be satisfied in the sales transaction or if the Trustee is to continue paying this debt through the Debtors' plan.

Additionally, the Trustee requests that a supplemental Schedule I and J are filed once the sale of the Property is complete to reflect the \$10,000.00 the Debtors are proposed to receive in relocation costs from the sale.

U.S. BANK NATIONAL ASSOCIATION'S CONDITIONAL NON-OPPOSITION

U.S. Bank National Association, as successor Trustee to Wachovia Bank, National Association, as Trustee for BAFC 2005-7 ("Creditor") filed a conditional non-opposition to the instant Motion on March 20, 2015. Dckt. 158. The Creditor states that its non-opposition is contingent upon its secured claim being paid off in full or in accordance with any approval as authorized by Creditor. The Creditor requests that these terms are included in the order.

DEBTORS' RESPONSE

The Debtors filed a response on April 6, 2015. Dckt. 162. The Debtors state that they are not opposed to amending their Schedules I and J within 15 days of the sale closing.

DISCUSSION

Attached to the Motion are the letters from Wells Fargo Bank approving the short sale for both the first and second deeds of trust. Dckt. 153. The terms of the short-sale appear to be in the best interest of the creditors, Debtors, and the estate. The short sale would provide the Debtors with funds for moving and relocating. The Debtors have stated that they will provide supplemental Schedules I and J after the sale is consummated.

While the Debtors did not address the Trustee's concerns over the disbursement to the unsecured portion of the Wells Fargo Bank's claim, the Debtors will need to amend the plan post-sale due to the terms of the short sale.

Debtors are to receive \$10,000.00 of the sales proceeds for relocation expenses. Debtors do not address this in their Declaration or explain how they have \$10,000.00 in "relocation expenses." This does not appear to be a "relocation expense," but a negotiated "piece of the action" for the fiduciary of the estate to conduct a sale of the property and save the creditors with secured claims from having to conduct competing foreclosure sales.

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

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

As for the "relocation expense," it is not approved by the court or authorized to be paid to Debtors. The \$10,000.00 shall be paid to the Chapter 13 Trustee, who shall hold the monies pending further order of the court. It appears that Debtors have abused their fiduciary position with the bankruptcy estate and are attempting to divert estate monies to themselves. The Debtor may file a motion for the court to determine the reasonable "relocation expenses" and order the Trustee to disburse those amounts to the Debtors.

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

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

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

IT IS ORDERED that the Douglas and Elizabeth Edwards, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Alan Kahong Chan and Hong Lei Yu or nominee ("Buyer"), the Property commonly known as [Street Address, California/description of personal property]("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$355,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 153, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtors be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The \$10,000.00 identified in the Estimated Closing Statement and the Motion as "relocation expenses" shall be paid to the Chapter 13 Trustee directly from escrow who shall hold the monies pending further order of this court. Any interest in or right to all or any portion of the \$10,000.00 as a bona fide relocation expense shall continue in full force and effect in the monies held by the Trustee.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

Antwanette Raymond ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 23, 2015. Dckt. 33.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 26, 2015. Dckt. 54. The Trustee objects on the following grounds:

1. The Plan completes in 69 months as opposed to 60 months proposed, based on the priority claim of the Internal Revenue Service. Proof of Claim No. 1-1 lists a priority claim of \$11,513.36, which is \$4,514.26 higher than scheduled in the plan. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1332(d)

DISCUSSION

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

The Trustee's objections are well-taken. A review of Proof of Claim No. 1-1 filed by the Internal Revenue Service does list a priority claim of \$11,513.36. The Debtor's proposed plan only lists the Internal Revenue Service having a priority claim of \$7,100.00 in class 5 of the plan. Dckt. 36. This is a discrepancy of approximately \$4,413.36. Under the proposed plan and plan payments, it would take approximately 68 months for the Debtor to completely pay the Internal Revenue Service's priority claim. This is beyond the maximum 60 month limitation on the term of a plan allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

30. [15-20936](#)-E-13 KENT TEIXEIRA
DBJ-1 Douglas B. Jacobs

MOTION TO VALUE COLLATERAL OF
GREEN TREE SERVICING, LLC
2-25-15 [[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 - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 25, 2015. By the court's calculation, 48 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.

<p>The Motion to Value secured claim of Green Tree Servicing LLC ("Creditor") is denied without prejudice.</p>

The Motion to Value filed by Kent Teixeira ("Debtor") to value the secured claim of Green Tree Servicing LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 164 La Mirada Ave, Oroville, California ("Property"). Debtor seeks to value the Property at a fair market value of \$412,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The 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.

Debtor seeks to value the collateral of "Green Tree Servicing, LLC." However, the court cannot determine from the evidence presented if Green Tree Servicing, LLC is the actual creditor and whose secured claim is to be valued pursuant to this Motion. The Motion facially does not properly identify the creditor nor provide any evidence of transfers that proves Green Tree Servicing, LLC is now the holder. 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 Debtor has not provided any evidence showing that Green Tree Servicing, LLC is, in fact, the holder of the lien and if they are the true creditor. Debtor's counsel appears regularly before this court and is aware of the need for the real party in interest, here being the actual creditor, to be properly noticed when their rights may be effected. With no claims having been filed and no evidence being provided to show that Green Tree Servicing, LLC is, in fact, the actual creditor rather than merely the servicer (as implicit in the name), 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 Kent Teixeira ("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.

31. 15-20936-E-13 KENT TEIXEIRA
DPC-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-17-15 [[19](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

The court's decision is to continue the hearing on the Objection to Confirmation to 3:00 p.m. on June 16, 2015.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the proposed plan relies on a pending Motion to Value Collateral of Green Tree Servicing, LLC. The Trustee argues that if the Motion to Value is denied, the Debtor cannot afford to make the payments as required by 11 U.S.C. § 1325(a)(6).

Debtor filed a reply to the Trustee's objection on April 7, 2015. Dckt. 23. The Debtor states that the Motion to Value is set for hearing on April 14, 2015 and that there is no opposition to the Motion.

As noted by the court in denying the Motion to Value, no evidence has been provided that Green Tree Loan **Servicing**, LLC is the actual creditor having a claim in this case, as opposed to being the **Servicing** company for the actual creditor having a claim in this case.

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

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

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

IT IS ORDERED that Objection is continued to 3:00 p.m. on June 16, 2015. This affords Debtor the opportunity to identify the actual creditor, provide the court with a basis for concluding that the entity identified in the motion is the creditor, and then the court to issue an order determining the value of the secured claim of the actual creditor in this case.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

Kenrick Cheung ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 23, 2015. Dckt. 64.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. The Trustee objects on the basis that the Debtor is delinquent \$200.00 under the proposed plan payments. The Debtor has not started paying \$200.00 per month in March 2015 under the terms of the proposed plan. Since filing, 19 payments have come due. Under the proposed plan, \$3,200.00 has been due but the Debtor has only paid \$3,000.00.

DISCUSSION

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

The Trustee's objection is well-taken. Under the terms of the proposed plan, the Debtor is \$200.00 delinquent in plan payments. The failure of the Debtor to be current on plan payments is an independent ground to deny confirmation of the proposed plan, pursuant to 11 U.S.C. § 1325(a)(2).

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

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

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

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

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

33. [15-22139](#)-E-13 NANCY/DANIEL BALAGUY
RS-1 Richard L. Sturdevant

MOTION TO EXTEND AUTOMATIC STAY
3-31-15 [[11](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 31, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.
--

Nancy and Daniel Balaguy ("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. FN.1. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-28542) was dismissed on March 2, 2015, after Debtor failed to confirm an amended plan within 75 days of the date of the entry of the order on the Trustee's Objection to Confirmation. See Order, Bankr. E.D. Cal. No. 14-28542, Dckt. 52, March 2, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

FN.1. The court is baffled by the Debtors' attorney's inclusion of a heading entitled "Memorandum of Points & Authorities" in his motion and placing citations, quotations, and legal arguments in the Motion. Local Bankruptcy Rule 9004-1(a) and the Revised Guidelines for Preparation of Documents ¶ (3)(a), which require that the motion, points and authorities, each declaration, and the exhibits be filed as separate electronic documents. However, the court, for purposes of this Motion only, waives this defect. Counsel should not count on such waivers being granted in the future.

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as the Debtors' counsel was unable to get a plan confirmed as required by the court's prior order within 75 days of its issuance because the Debtors' counsel failed to properly serve the Internal Revenue Service as required by the local rules. The Debtors state that the instant case was filed in good faith because they are attempting to reorganize their debts and to save their home.

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

IT IS ORDERED that the Motion is granted 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.

34. 11-21942-E-13 **BASCOMB GRECIAN** **MOTION TO MODIFY PLAN**
JSO-2 **Jeffrey S. Ogilvie** **2-23-15 [46]**

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 23, 2015. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

Bascomb Grecian ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 23, 2015. Dckt. 46.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 55. The Trustee objects on the following grounds:

1. The Debtor's declaration may contain insufficient evidence in support of the Motion. The Debtor's declaration does not state why the Debtor seeks to reduce the plan length in light of the fact that the prior confirmed plan was for 60 months and the Debtor being under-median.
2. The plan may unfairly discriminate against unsecured creditors. Under the confirmed plan, creditor Victor Clarke was listed as Class 6 unsecured. It appears that Mr. Clarke has been paid 100% while the remaining unsecured claims received the first disbursement in month 48, the same month the Debtor is proposing to complete the Chapter 13 plan term.

DISCUSSION

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

The Trustee's objections are well-taken. A review of the Motion and the Debtor's declaration shows that the Debtor fails to explain or justify, outside the fact the Debtor is an under-median debtor, why the plan term should be reduced from 60 months to 48 months. This is needed especially in light of the fact that the Debtor's confirmed plan is for 60 months. The lack of explanation raises even more concerns over the timing of the Motion given the fact that the Class 6 claim was paid in full at month 48, right before the general unsecured creditors would begin receiving disbursements. It raises concerns with the court of whether the instant plan was filed in good faith. Without more justification as to why the Debtor, at this juncture, wishes to reduce the plan term, the proposed plan cannot be confirmed.

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

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

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

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

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

35. [14-32444](#)-E-13 WALTER MATHISON
BLG-1 Pauldeep Bains

MOTION TO VALUE COLLATERAL OF
HSBC MORTGAGE SERVICES, INC.
3-2-15 [[19](#)]

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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 43 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 is denied without prejudice.

The Motion to Value filed by Walter L. Mathison, Jr. ("Debtors") to value the secured claim of Bank of America, NA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2634 Burnaby Way, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$305,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

Debtor seeks to value the collateral of "Bank of America, N.A." However, on March 23, 2015 (after the filing of the instant Motion), Green Tree Servicing, LLC filed Proof of Claim No. 1 for Pinta, LLC. Proof of Claim No. 1 is in the amount of \$31,082.58 and is secured by the real property which is identified in the Motion. The attachments to Proof of Claim No. 1 identify that Bank of America, N.A. was the creditor who provided Debtor with a line of credit secured by the deed of trust. The Motion states that Debtor asserts that there is only \$1.00 owed to the creditor holding the claim secured by the second deed of trust.

The Motion does not seek relief against the creditor who asserts the claim in this case. The Motion is denied without prejudice

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

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

The Motion for Valuation of Collateral filed by Walter L. Mathison, Jr. ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

36. [14-32444](#)-E-13 WALTER MATHISON
DPC-1 Pauldeep Bains

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
2-11-15 [[15](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 11, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor has failed to file a Motion to Value Collateral of Green Tree's Second Deed of Trust which was discharged in the Debtor's prior bankruptcy. The Trustee argues that the Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6).

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Objection on March 3, 2015. Dckt. 25. The Debtor states that the Debtor filed a Motion to Value Collateral

of Bank of America, N.A. (2nd Deed of Trust) on March 2, 2015 which is set to be heard on April 14, 2015. Dckt. 19.

MARCH 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Value Collateral. Dckt. 29.

DISCUSSION

On April 14, 2015, the court denied the Debtor's Motion to Value the Collateral of Bank of America, NA due to the Debtor's failure to provide evidence that Bank of America, N.A. is the true creditor in light of Proof of Claim No. 1 filed by Green Tree Servicing, LLC.

With the Motion to Value being denied, the Trustee's objection is well-taken. The Debtor's proposed plan relied on the court valuing the secured claim held by an uncertain creditor at \$0.00. However, since the court could not determine who the true creditor of the second deed of trust is based on the Debtor failing to provide evidence of the holder of the loan, the court had to deny the Motion to Value. Therefore, the Debtor appears to be unable to make the payments under the plan or comply with the plan as required by 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

37. [15-20446](#)-E-13 DENNIS GARWOOD OBJECTION TO CONFIRMATION OF
ASW-1 Douglas B. Jacobs PLAN BY BANK OF AMERICA, N.A.
3-13-15 [[38](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

38. [15-20446](#)-E-13 DENNIS GARWOOD OBJECTION TO CONFIRMATION OF
DPC-1 Douglas B. Jacobs PLAN BY DAVID P. CUSICK
3-11-15 [[30](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

39. [15-20446](#)-E-13 DENNIS GARWOOD OBJECTION TO CONFIRMATION OF
PP-1 Douglas B. Jacobs PLAN BY U.S. BANK, N.A.
2-9-15 [[19](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

40. [15-20446](#)-E-13 DENNIS GARWOOD OBJECTION TO CONFIRMATION OF
PPR-1 Douglas B. Jacobs PLAN BY BANK OF AMERICA, N.A.
2-19-15 [[26](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2015. By the court's calculation, 53 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.

Philip and Yvette Holden ("Debtors") filed the instant Motion to Confirm the Modified Plan on February 19, 2015. Dckt. 69.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection tot he instant Motion on March 30, 2015. Dckt. 76. The Trustee objects on the following grounds:

1. The Debtor is delinquent \$3,470.00 under the terms of the proposed plan. The Debtor has paid a total of \$8,748.00 to the Trustee when the proposed plan states that \$12,218.00 have become due.
2. Debtor proposes to add \$7,326.00 in post-petition arrears as a Class 2 claim. Where the plan appears to require a claim to be filed for the payments required, the Trustee asks that the

Debtor clarify this treatment to not require any additional claim. If the Debtor wishes to add post-petition arrears to the plan, they should be included as a Class 1 claim.

3. The Trustee is uncertain of the monthly dividends proposed to Class 2 claims Harley Davidson and Bank of the West. The modified plan requires the trustee to change the payments before the modified plan is approved. The modified plan does not acknowledge any payments made under the confirmed plans to these creditors.

DEBTOR'S REPLY

The Debtors filed a reply to the Trustee's Objection on April 6, 2015. Dckt. 79. The Debtors respond as follows:

1. The Trustee's records reflect that he received a payment of \$3,400.00 on March 30, 2015, the same day the objection was filed. The plan payments should now be current.
2. Because the Debtors' change in employment, they were unable to make sufficient payments to the Trustee to provide for all of the ongoing mortgage payments. The modified plan proposes a feasible basis for curing the arrears. Unfortunately, the Trustee disbursed under the confirmed plan rather than the proposed plan filed on February 19, 2015 which resulted in the Trustee making double payments to the Class 2 creditors in March 2015, causing there to be insufficient funds to catch up the payments due to the mortgage holder. The Debtor states that the Debtors are playing "catch up" between modifying the plan ahead of disbursements under the confirmed plan.
3. The modified plan proposes that disbursements to Class 2 creditors begin in March 2015. This was intended to be the terms under the modified plan.

The Debtors propose the following language in the order confirming:

1. Plan payments shall be \$3,470.00 per month beginning April 2015.
2. Disbursements beginning April 2015 shall be as follows:
 - a. Monthly to the Class 1 claim of Wells Fargo: \$1,251.00 until such time as a loan modification is approved by the court or rejected by Wells Fargo pursuant to the language in the additional provisions
 - b. Post-petition arrears, totaling \$8,756.00 from the petition date, owing to Wells Fargo, shall be paid as a Class 1 claim with a monthly dividend of \$179.00 without the filing of a claim for such arrearages.
 - c. Monthly to the Class 2 claim of Harley Davidson: \$732.00
 - d. Monthly to the Class 2 claim of Bank of the West: \$618.00.

3. All disbursements made prior to confirmation of the Modified Plan are acknowledged and no recovery of such payments shall be required by the Trustee.

DISCUSSION

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

The Trustee's objections are well-taken. However, the proposed amendments provided for by the Debtor in their reply sufficiently rectify the errors in the proposed plan. The proposed amendments clarify the treatment of the post-petition arrears in Class 1 and corrects the uncertainty concerning the prior disbursements made under the confirmed plan as well as the treatment of Class 2 claims.

As to the claims of delinquency, the Debtors state under the penalty of perjury that they have cured the delinquency the same day as the Trustee filed his objection. Therefore, that objection is overruled.

Therefore, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329, following the amendments in the order confirming, 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 21, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan with the following amendments:

1. Plan payments shall be \$3,470.00 per month beginning April 2015.
2. Disbursements beginning April 2015 shall be as follows:
 - a. Monthly to the Class 1 claim of Wells Fargo: \$1,251.00 until such time as a loan modification is approved by the court or rejected by Wells Fargo pursuant to the language in the additional provisions
 - b. Post-petition arrears, totaling \$8,756.00 from the petition date, owing to Wells Fargo, shall be paid as a Class 1 claim with a monthly dividend of \$179.00 without the filing of a claim for such arrearages.
 - c. Monthly to the Class 2 claim of Harley Davidson: \$732.00

- d. Monthly to the Class 2 claim of Bank of the West: \$618.00.
- 3. All disbursements made prior to confirmation of the Modified Plan are acknowledged and no recovery of such payments shall be required by the Trustee.

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.

42. [15-20352-E-13](#) GREGORY/CLARICE BRIDGES
DPC-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-2-15 [[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 2, 2015. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.
--

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

1. Debtor has failed to file all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. §§ 1308 and 1325(a)(9).

2. Debtor is \$130.00 delinquent in plan payments to the Trustee and therefore the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(2).
3. The Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6) because the proposed plan relies on the Motion to Value Collateral of FMAC Mortgage which the Debtor has not filed to date.
4. The plan will not complete within 60 months as required by 11 U.S.C. § 1322(d) due to the priority debt of Internal Revenue Service. Proof of Claim No. 3-1. The plan would take 150 months to pay the priority claim in full.
5. Debtor's proposed plan fails to provide for the secured debt of County of Sacramento.
6. Debtor may not be able to make the plan payments. The Trustee reviewed the Debtor Gregory Bridge's most recent paystubs and calculated that the gross average income per month of \$7,584.41 which is \$1,925.99 less than listed on Schedule I. As to Debtor Clarice Bridges, the Trustee calculated, based on her paystubs, that her gross average wage per month is \$7,584.41 which is \$731.61 more than listed on Schedule I. The average of the paystubs for both Debtors indicates that the Debtors earn \$1,204.27 less than that listed on Schedule I.

The Trustee's objections are well-taken.

As to the Trustee's first objection, the filing of the return is required. 11 U.S.C. § 1308. According to the Trustee's records and the proof of claim filed by the Internal Revenue Service, the Debtors have not filed all pre-petition tax returns required for the four years preceding the filing of the instant case. Debtor's failure to file the return is grounds to deny confirmation under 11 U.S.C. § 1325(a)(9).

The Debtors' delinquency is also an independent ground to deny confirmation. According to the Trustee's records, the Debtors are \$130.00 delinquent in plan payments under the proposed plan. Therefore, the objection is sustained and the plan is not confirmed pursuant to 11 U.S.C. § 1325(a)(2).

The Debtors' have not filed a Motion to Value the Collateral of FMAC Mortgage. A review of the proposed plan shows that the plan relies on the court valuing the secured claim of FMAC Mortgage. However, the Debtors have yet to file such a motion. Therefore, the Debtors cannot comply with the plan under 11 U.S.C. § 1325(a)(6).

As to the Trustee's fourth objection, the Internal Revenue Service's Proof of Claim 3-1 indicates that it has a priority debt of \$27,409.50. A review of the proposed plan lists the Internal Revenue Service having a priority debt in the amount of \$15,131.35. Therefore, the plan term would need to be approximately 150 months in order for the full priority amount to be paid in full at the current plan payment amount which is not permitted by 11 U.S.C. § 1322(d).

A review of the plan reveals that the Debtors do not account for the secured debt of the County of Sacramento. 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.

Lastly, the Trustee's calculations of the Debtors' income reveals concerns for the court of whether the plan is feasible, given that they appear to have overstated their income on Schedule I. The calculations of the past six months of income shows that the Debtors earn \$1,204.27 less than what is listed on Schedule I. Under the proposed plan, the proposed plan payment is \$2,580.00 per month. With such a dramatic difference in the paystubs and Schedule I, the court agrees with the Trustee that it does not appear that the Debtors are able to make the plan payments.

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

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

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

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

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

43. [15-20352-E-13](#) GREGORY/CLARICE BRIDGES
JHW-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY CREDIT ACCEPTANCE
CORPORATION
3-2-15 [[25](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 43 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 on -----

The court's decision is to sustain the Objection.

Creditor, Credit Acceptance Corporation, opposes confirmation of the Plan on the basis that the proposed plan does not provide for the full secured claim of the Creditor, as stated in the Creditor's Proof of Claim No. 1. FN.1.

FN.1. The Creditor's objection discusses proper valuation under 11 U.S.C. § 506(a) and the validity of the evidence provided for by the Debtor. However, for purposes of the instant Objection and the fact no Motion to Value is pending, the crux of the Creditor's objection is the failure of the Debtor to provide for the Creditor's full secured claim in the proposed plan.

The Creditor's objections are well-taken. The plan states that the amount claimed by the Creditor is \$2,024.74. However, a review of the claims register shows that the Creditor filed a Proof of Claim No. 1 on January 21, 2015, listing a secured claim of \$4,262.29.

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

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

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

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

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

Here, the Debtors have provided for the secured claim of the Creditor, just not in the full amount as required by 11 U.S.C. § 1325(a)(5). The Debtor has not filed a Motion to Value the secured claim of Creditor, and therefore, the Creditor's Proof of Claim No. 1 controls without a court order valuing the claim otherwise. Therefore, the Creditor's objection is sustained.

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

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

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

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

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

44. [10-41654](#)-E-13 EDWARD/JOYCE BUCHANNAN MOTION TO INCUR DEBT
TJW-1 Timothy J. Walsh 3-12-15 [[57](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

FN.1. The court notes that Debtor's counsel continues to format his pleadings using no paragraphs, no headings, no numbering, and no attempt to provide the court, Trustee, and creditors with a reasonably readable document. Though the court has commented on this before, counsel persists in using this format, disregarding the prior comments and exercising common professional courtesy to his fellow professionals. The court issues this ruling and order using the formatting style of counsel.

Correct Notice Provided.

The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2015.

By the court's calculation, 33 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.

Edward and Joyce Buchannan ("Debtors") filed the instant Motion to Incur Debt on March 12, 2015. Dckt. 57. The Motion seeks permission to procure a Small Business Disaster Loan, in the total amount of \$15,122.00, with monthly payments of \$58.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on March 17, 2015.

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 Debtors states that the loan is necessary to make repairs on the Debtors' residence caused by the 2014 Napa earthquake.

The loan is sponsored by the Small Business Administration of the U.S. Government.

The interest rate of the proposed lone is 2.063% and the monthly payments

would be in the amount of \$58.00.

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable.

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 Edward and Joyce Buchannan ("Debtor") are authorized to incur debt pursuant to the terms of the agreement, Exhibit 1, Dckt. 60.

(This order is formatted in the same manner as counsel for Debtor has formatted his pleadings in this case.)

45. [11-48055](#)-E-13 CURTIS HEIGHER
PLC-7 Peter L. Cianchetta

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE AND/OR MOTION
FOR COMPENSATION BY THE LAW
OFFICE OF CIANCHETTA AND
ASSOCIATES FOR PETER
CIANCHETTA, DEBTOR'S ATTORNEY
2-9-15 [[100](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The court having previously continued the hearing on the Objection to Notice of Mortgage Change, pursuant to the parties stipulation to 1:30 p.m. on April 28, 2015. Dckt. 108), **this matter will be addressed at the continued hearing.**

46. [13-31359](#)-E-13 RANDY/KIMBERLY CRISP
GW-3 Gary H. Gale

MOTION FOR COMPENSATION FOR
GARY H. GALE, DEBTORS' ATTORNEY
3-9-15 [[45](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 9, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion for Allowance of Professional Fees is granted.</p>

Gary Gale, the Attorney ("Applicant") for Chapter 13 Debtor ("Client"), makes a second Interim Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period March 25, 2014 through February 24, 2015. Applicant requests fees in the amount of \$1,530.00.

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 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 the successful filing of an Objection to the late filed claim of Calvary Portfolio Services. The estate has \$2,091.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

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

General Case Administration: Applicant spent 1.05 hours in this category. Applicant assisted Client with reviewing Trustee's Debtor Summary Report for 2013 and 2014.

Efforts to Assess and Recover Property of the Estate: Applicant spent 2.85 hours in this category. Applicant reviewed Trustee's Notice to Filed claims, reviewed late claim by Calvary Portfolio as assignee beneficiary, and sent detailed analysis to Clients on Plan status.

Adversary Proceedings: Applicant spent 1.20 hours in this category. Applicant completed all pleadings to file Objection to Claim.

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
Attorney Applicant: Gary Gale	5.10	\$300.00	\$1,530.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$1,530.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$8,610.00	\$8,610.00
Second Interim	\$1,530.00	\$0.00
	<u>\$0.00</u>	
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$10,140.00	

FEES AND COSTS & EXPENSES ALLOWED

Fees

Hourly Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second Interim Fees in the amount of \$1,530.00 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees	\$1,530.00
------	------------

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 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 Gary Gale ("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 Gary Gale is allowed the following fees and expenses as a professional of the Estate:

Gary Gale, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$ 1,530.00
Expenses in the amount of \$ 0.00,

The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

47.	<u>15-20659</u> -E-13	JUVENAL ZAMORANO	OBJECTION TO CONFIRMATION OF
	DPC-1	Thomas O. Gillis	PLAN BY DAVID P. CUSICK
			3-11-15 [<u>23</u>]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

48.	<u>10-44663</u> -E-13	MARY MANNER	MOTION TO MODIFY PLAN
	AJP-7	Al J. Patrick	3-4-15 [<u>121</u>]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2015. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

On April 1, 2015, Mary Manner ("Debtor") filed a Motion to Confirm an Modified Plan, attaching a new proposed modified plan. Dckt. 129 & 131. The

court construes the pending Motion to Confirm and new proposed modified plan as a de facto withdrawal and the "Withdrawal" is consistent with the opposition filed to the Motion. Therefore, the court interprets the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Confirm, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Confirm.**

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is dismissed without prejudice.

49. [10-44663](#)-E-13 MARY MANNER
DPC-7 Al J. Patrick

CONTINUED MOTION TO DISMISS
CASE
3-2-15 [[117](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue to the hearing on the Motion to Dismiss to 3:00 p.m. on May 19, 2015, to be heard in conjunction with the Motion to Confirm the Modified Plan.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 2, 2015. Dckt. 117.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,820.00 delinquent in plan payments, which represents multiple months of the \$420.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed an opposition to the instant Motion on March 12, 2015. Dckt. 125. The Debtor argues that the Debtor has filed and served a motion to Confirm Modified Plan which is set for hearing on April 14, 2015. Further, the Debtor objects to the amount due under the plan. The Debtor asserts that the calculation of 48 months at \$420.00 per month is \$20,160.00 plus six payments of \$115.60 per month totally \$933.60 for payments due through and including March 25, 2015 payment, for a total of \$21,093.50 and not the \$22,680.00 alleged by the Trustee. The Debtor states that she plans to be current under the modified plan on or before March 25, 2015.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing on the Motion to Dismiss to 3:00 p.m. on April 14, 2015, to be heard in conjunction with the Motion to Confirm the Modified Plan. Dckt. 136.

TRUSTEE'S REQUEST FOR CONTINUANCE

The Trustee filed a request for a continuance on April 6, 2015. Dckt. 134. The Trustee states that the Debtor has filed a new modified plan and Motion to Confirm on April 1, 2015 which is set for hearing at 3:00 p.m. on May 19, 2015. Dckt. 129. The trustee requests that the court continue the instant Motion to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Motion to Confirm.

DISCUSSION

In light of the Trustee's request and the interconnectedness of the Motion to Confirm and the instant Motion, the court continues the instant Motion to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Motion to Confirm.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Motion to Confirm.

50. [14-31363](#)-E-13 AARON/MARIA MAREADY
GDC-4 Guy David Chism

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO HOME
MORTGAGE
2-12-15 [[46](#)]

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

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

Below is the court's tentative ruling.

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

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

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

<p>The court's decision is to grant the Motion to Value secured claim of Wells Fargo Bank, N.A. at \$00.00.</p>
--

The Motion to Value filed by Aaron R. Maready and Maria Elena Maready ("Debtors") to value the secured claim of Wells Fargo Home Mortgage ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2704 Loggerhead Way, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of \$427,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See *Fed. R. Evid. 701*; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor offers the Declaration of Carolyn Caples, a licensed real estate appraiser with 9 years' experience, who opines that the value of the property is \$427,000.00.

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

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

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

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

OPPOSITION

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

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

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

RESPONSE TO OPPOSITION

Debtor's have filed a reply to opposition. Debtors contend that Creditor's argument that they are attempting to devalue or modify the first priority lien is unfounded. Debtors state that in their motion there is

nothing that alludes to them attempting to reduce the value of the first priority lien. FN.1.

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

Debtors further argue that Creditor's request to have this Court wait to rule on the motion is not permitted. Debtors state that nowhere in the Eastern District's Local Rules does it allow a creditor to object to motion in Chapter 13 cases because the creditor is unprepared. The Creditors have had 25 days to review and obtain balances on all accounts and to make a reasonable inquiry into the value of the Debtors' real property. The Debtors contend that they both know the value of their home to a reasonable certainty. Furthermore, they had a Certified Market Value done on their home by a licensed real estate agent.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 14, 2015 to allow the Creditor the opportunity to obtain an appraisal on the Property. Dckt. 75.

DISCUSSION

The Creditor has not filed any supplemental pleadings since the court continued the hearing on March 24, 2015.

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

In light of the fact the Creditor has not filed any supplemental pleadings, the court turns to the merits of the Motion. The senior in priority first deed of trust secures a claim with a balance of approximately \$514,194.00. Creditor's second deed of trust secures a claim with a balance of approximately \$49,937.00. 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 Aaron and Maria Maready ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Home Mortgage secured by a second in priority deed of trust recorded against the real property commonly known as 2704 Loggerhead Way, 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 \$427,000.00 and is encumbered by senior lien securing claims in the amount of \$514,194.00, which exceeds the value of the Property which is subject to Creditor's lien.

51. [09-47666](#)-E-13 FARRELL/DAWNELLE JACKSON
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
3-13-15 [[97](#)]

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, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 32 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.

<p>The Motion to Value secured claim of JPMorgan Chase, National Association ("Creditor") is denied without prejudice.</p>

The Motion to Value filed by Farrell Jackson and Dawnelle Jackson ("Debtors") to value the secured claim of JPMorgan Chase, National Association ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 11923 S.E. 98th Ct. Belleview, Florida ("Property"). Creditor obtained the interest in the Property after Chase Home Finance, LLC transferred the claim to Federal National Mortgage Association on January 10, 2014. Federal National Mortgage Association then transferred the Claim to the Creditor on February 27, 2015. Debtor seeks to value the Property at a fair market value of \$84,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The court first addresses the fact that the Debtor's Motion does not clearly identify the creditor whose claim they are trying to value. The Debtors refer to the Creditor as "Respondent" but it is only in the caption of the Motion that the Debtors lists the words JPMorgan--Chase--Bank--N.A. Furthermore, the Debtor's Motion does not specifically request to value the secured portion of the Creditor's claim but rather just to value the Property at \$84,000.00. No relief is requested as to any person (who is unnamed) in the Motion.

The court further notes that the Debtor does not sufficiently plead that the Property is not the Debtor's primary residence. Pursuant to 11 U.S.C. § 1322(b)(2), a plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims." Here, the Debtor's motion identifies the Property as Debtor's "residence." While the court does not that buried in the Debtors' Declaration there is a single line that states that the Property is not the primary residence, the Motion does not provide for the particularity that is necessary pursuant to Fed. R. Bankr. P. 9013.

In light of the Motion facially being insufficient at identifying the Creditor, not properly pleading that the Property is not the primary residence of the Debtor, and only requesting to value the collateral at \$84,000.00 and

not the secured claim of Creditor, the Motion is denied without prejudice.
FN.1.

FN.1. The court also notes that the Notice of Motion does not give notice to
any person that his, her, or its rights are the subject of the proceeding.

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 Farrell
Jackson and Dawnelle Jackson ("Debtors") having been presented to
the court, and upon review of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

52. 15-22069-E-13 KARA MORA
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
3-24-15 [[12](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.
--

Kara Mora ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 13-21127) was dismissed on January 29, 2015, after Debtor failed to make the plan payments. See Order, Bankr. E.D. Cal. No. 13-21127, Dckt. 87, January 29, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as there being a drop in hours at her employment. The Debtor states that her hours at work are back to normal. The Debtor argues that her Schedule I and Form B22C reflects that she is earning enough wages and money to cover all her necessary obligations in addition to the proposed Chapter 13 plan.

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.

53. [11-36470](#)-E-13 WASIF/IRUM ASGHAR
WW-3 Mark A. Wolff

CONTINUED MOTION FOR
COMPENSATION FOR R. TODD LUOMA,
DEBTORS' ATTORNEY
1-20-15 [[105](#)]

Tentative Ruling: The Motion for Compensation 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 NOT Notice Provided. Movant has failed to provide a Proof of Service. 14 days' notice is required.

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

The Motion for Compensation is granted, with Applicant allowed fees in the amount of \$3,500.00 and expenses of \$5.05, with all other requested compensation denied.
--

R. Todd Luoma, special tax counsel for Debtors Wasif and Irum Asghar, ("Applicant") filed an Application for Allowance of Fees and Costs. The Applicant is seeking for an allowance of attorney's fees and costs for the period of August 25, 2014 through and including January 14, 2015.

The Motion states that Applicant is seeking the allowance of fees in the amount of \$8,051.50, costs of \$5.05, and the authorization to apply \$4,500.00 held in trust. Motion, Dckt. 105. The services for which fees are requested were performed after August 2014. The Motion was filed on January 20, 2015.

Applicant states that he was retained as special counsel by Debtors to represent them in their dispute over the tax debt asserted by the California State Board of Equalization against the Debtors. Applicant has billed for his services at \$475.00 an hour. Applicant does not provide the court with a fee billing statement or explanation of the services for which the \$8,051.50 in fees is requested. Motion, Dckt. 105; Declaration, Dckt. 106.

Motion to Withdraw as Counsel for Debtors

Applicant also filed a motion for authorization to withdraw as counsel for Debtors. Dckt. 107. That motion alleges that the Debtors terminated Applicant as their counsel. The motion further states that Debtors will be represented by their bankruptcy counsel in the further proceedings in determining the tax claim, if any. The court granted the motion and authorized Applicant to withdraw as Debtors' special counsel. Dckt. 115.

DEBTORS' OPPOSITION

The Debtors filed an opposition to the instant Motion on February 11, 2015. Dckt. 116. The Debtors state that the services rendered by Applicant were of no use and benefit to the Debtors of the estate. Namely, the Debtors argue that the services were detrimental to the Debtors and the estate because no progress was made on the case and at the time of withdrawal discovery propounded by Creditor was more than 60 days left. Further, the Debtors argue that Applicant failed to provide an itemized billing statements.

The Debtors argue that Applicant has failed and refused to turn over Debtors' complete file to Debtors or their attorney.

APPLICANT'S REPLY

Applicant filed a response on February 17, 2015. Dckt. 119. The Applicant states that the Applicant originally did not provide detailed invoices because of the information contained in them. However, because of the Debtors objections, the Applicant has attached the statements, construing the Debtors' objection as a waiver of any client-attorney privilege associated with them.

Applicant responds that the benefit to Debtors from the services provided include propounding of discovery to the State Board of Equalization and the receipt of responses; the negotiation of a possible resolution of the dispute with two sections of the State Board of Equalization and the Board's counsel; securing a counter offer from the Board's counsel; and obtaining extensions of time to respond to the Board's discovery. Completion of the representation of Debtors with regard to the objection to claim was thwarted by Debtors' terminating the firm's representation.

As to the Debtors' contention that Applicant has not turned over Debtors' file, the Applicant states that the Debtor Wasif Asghar appeared at the firm's office and was given the box of documents. Further, Applicant states that Debtors' counsel has copies of all discovery documents propounded by the Debtor, the responses from the Board, and the Board's discovery documents.

The Applicant states that the Debtors' argument that the responses were late to the Board is not proper. The Applicant alleges that he received the

request on October 24, 2014, while he was on vacation. On November 5, 2014, the discovery requests were sent to the Debtors. The Debtors did not timely respond so the firm obtained an extension to the discovery until December 24, 2014. The Applicant asserts that the Debtors failed to communicate with the firm concerning the matter for more than 30 days after the extension of the discovery responses. The Debtors called on December 29, 2014, after the Applicant sent an email to the Debtors, seeking another copy of the Board's discovery requests. The Applicant got another extension for discovery to January 13, 2015. The Applicant argues the delay was due to the Debtors.

The Debtors terminated the firm prior to the expiration of the second extension to respond to the Board's discovery.

Lastly, the Applicant states that the Debtors' request for the fees held in the firm's trust account to be turned over to the Chapter 13 Trustee is improper because the funds came from the Debtor Wasif Asghar's sister, not the Debtor.

FEBRUARY 24, 2015 HEARING

At the hearing, the court noted that the Applicant failed to provide a Proof of Service for the court to determine if all necessary parties were served and whether proper notice was given. Dckt. 120. Furthermore, the court noted that Applicant's Notice failed to abide by the requirements of Local Bankr. R. 9014-1(d)(3).

The court waived the defects in notice and set the Motion set for a final hearing at 3:00 p.m. on April 14, 2015 pursuant to Local Bankruptcy Rule 9014-1(f)(2). The court ordered that Supplemental Opposition, if any, shall be filed and served on or before March 26, 2015, and Supplemental Reply, if any, shall be filed and served on or before April 2, 2015.

DEBTORS' SUPPLEMENTAL OPPOSITION

The Debtors filed a supplemental opposition on March 26, 2015. Dckt. 128. The Debtors state that the Applicant failed to address all the factors of 11 U.S.C. § 330(a)(3). The Debtors state that Applicant has failed to explain how spending more than 13 hours related to the issue of the objection to the State Board of Equalization's claim, without conducting any legal research and without any apparent progress towards settlement of the dispute, was necessary to the administration of, or beneficial toward the completion of Debtors' plan.

The Debtors also argue that Applicant failed to show that the services were performed within a reasonable time. Debtors allege that Applicant's work consisted primarily of communications with Debtors and Debtors' attorney, limited discovery requests, and settlement discussion.

The Debtors argues that the Applicant has not stated that he is board certified or otherwise demonstrated a skill and experience in the bankruptcy field or in the field of negotiating settlements in disputes related to the State Board of Equalization taxes.

The Debtors alleged that the Applicant has not shown that the compensation is reasonable based upon customary compensation charged by comparably skilled

practitioners. Debtors also alleges that Applicant has not shown that the services rendered were reasonably likely to benefit the estate.

Debtors request that the Motion be denied or that the amount of compensation be reduced to no more than \$1,425.00.

DISCUSSION

Here, the Applicant is requesting \$8,056.55 in fees and costs. The Applicant states that the firm is holding a trust account balance of \$4,500.00 in the Debtors' trust account which was provided for by the Debtor's sister.

Bankruptcy is a fiduciary laden environment, not only with attorneys and other professionals having fiduciary duties to their client, but the chapter 13 debtors, trustees, and debtors in possession having fiduciary duties to the bankruptcy estates. Fee applications are routinely presented to the court, with detailed fee billing statements (redacted as appropriate) provided. This is necessary for the court and other parties in interest to evaluate the services and insure that bankruptcy remains an open, fair, process in which cases are administered not only consistent with the Bankruptcy Code, but for the benefit of all parties, not merely the "insider crowd" consisting of professionals, trustees, and debtors in possession.

While the Applicant provided the billing statements for the Debtors in his reply, the Applicant failed to provide task billing statements. Normally, task billing is necessary for the court and other parties in interest to reasonably evaluate the services provided. It is not for the court and other parties in interest to wade through pages and pages of billing statements to identify the fees to activities. For purposes of this Motion and the final hearing, the court concludes that a task billing analysis is not necessary in light of the narrow scope of the special counsel services and the limited time period of representation.

Review of Billing Statements

The billing statements provided (Dckt. 119) are for the months August through December 2014. The August time entities appear to include mostly general background information concerning the bankruptcy case and communicating with the Debtors' bankruptcy attorney. In September, the billings indicate that there were communications with the State Board of Equalization counsel, including the preparation of discovery requests.

Beginning in September and continuing in the October, the billing entries reflection discussion of settlement options and a possible proposal. The November entries make reference to rejection of Debtors' settlement offer and possibly transfer of this dispute to the State Board of Equalization "Offer Group."

Debtors opposition is correct, the billings do not include "legal research" or other time spent confirming the law. What the court does not know is whether legal issues were "ignored" or the issues presented for settlement are such that a knowledgeable tax practitioner would not have to do the research, but assemble the facts for proposing a settlement. (Similar to how an experienced bankruptcy attorney would not have to spend significant time

researching 11 U.S.C. § 362 to evaluate the legal grounds for relief from the stay, but would focus on the facts and arguments to be advanced.)

The federal judicial process is one in which the judge has the responsibility to make his or her decision based on the correct law. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. at 277. However, the judge is dependant on the parties to present the competent, credible evidence from which the judge is to make the required findings of fact. In making the requisite findings of fact and making the conclusions of law therefrom, the judge should not go outside the record unless the facts are matters of common knowledge or capable of certain verification (Fed. R. Evid. 201, Judicial Notice). *Clicks Billiards, Inc. v. Sixshooters, Inc.*, 251 F.3d 1252, 1267 (9th Cir. 2001). The court having afforded the parties the opportunity to present the best evidence they could, the court makes the determination based on the evidence presented.

Statutory Basis For Professional Fees

In 11 U.S.C. § 330(a)(3) the Bankruptcy Court sets out the basic framework for the determination of professional fees in bankruptcy cases:

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 a professional attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the professional 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). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign 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.

In considering the benefit to the Estate and whether the services were "necessary" to be provided to the fiduciary of the bankruptcy estate, the court does not expect the professional to "guaranty" results or success. Commonly, if such professional were guarantying a result, that professional would be compensated based on some form of contingent fee (such as a personal injury or collection attorney, real estate broker, or auctioneer).

Consideration of Services, Benefit to Estate

For whatever reason, the attorney-client relationship came relatively quickly to an end for Applicant and Debtors. The Objection to the State Board of Equalization claim was filed on July 15, 2013, by Debtors' bankruptcy counsel. Dckt. 73. The Objection appears to be focused on a relatively "simple" (at least in number of issues in dispute) question of whether Debtor is a responsible person for State Board of Equalization tax obligations of a corporation for which Debtors owed 50% of the stock. While the factual issues of Debtors management and control of the corporation may be more complex, the underlying legal issues do not appear to be such.

Though the Objection to the State Board of Equalization claim was filed in July 15, 2015, that objection has not been prosecuted in this court. The Objection was filed to address the Chapter 13 Trustee's motion to dismiss the case because the plan failed to provide for the claim as filed. The Debtors and State Board of Equalization concurred that this court should continue the hearing and allow the Debtors' prosecution of an appeal of the tax debt in the State administrative proceedings. The court has so continued the Objection to Claim hearings.

At the March 4, 2014 continued hearing, the parties reported that the State Board of Equalization was reviewing a settlement proposal from Debtors. Civil Minutes, Dckt. 90. This settlement proposal pre-dates the employment of Applicant. Relying on the representation that a good faith settlement proposal had been submitted and that it was being reviewed in good faith, the court further continued the hearing (rather than exercising federal court jurisdiction to determine claims, which is necessary for the effective prosecution of bankruptcy cases).

The court then continued the hearing on the Objection further, based on the representation that Debtors were appealing the rejection of the proposed settlement to the Board itself. Civil Minutes for September 9, 2014 hearing, Dckt. 98.

At the November 18, 2014 hearing on the Objection, it was reported by the parties that discovery had been propounded and production was in process. STATE BOARD OF EQUALIZATION Status Report, Dckt. 99; Civil Minutes, Dckt. 101.

From the time Applicant was engaged, the Objection to the State Board of Equalization claim had moved from the state administrative process to the claims objection process (to the extent that there was not a final determination made in the administrative process by which the claim amount was determined for purposes of the bankruptcy case). From a review of the time sheets and Civil Minutes, Applicant's services were to communicate with Debtors and propound discovery.

The court does not know why or how the special counsel-Debtors relationship has broken down. What the court can see is that this Objection, which has now been pending for more than a year, appears to be again mired.

FEES ALLOWED

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. At a billing rate of \$475.00 an hour, the requested \$8,051.50 represents 17 hours. Much of that appears to be communicating with Debtors and Debtors' bankruptcy counsel. For the services provided, the court concludes that either the hourly rate is too high, or that counsel with such hourly rate should not have spent as much time on the matters. It may well have been that an associate attorney with a lower billing rate should have been handling some of the matters.

It also appears from the communications presented, the discovery has not been completed. It appears that Applicant would argue that Debtors have failed to provide the documents and assist in the discovery. Debtors assert that counsel has not done the discovery. Whomever is correct, the discovery has not

been completed (at least as the court can determine from the record presented for this Motion).

It may also be that both the Debtors and Applicant regret having decided to enter into the special counsel-Debtors client relationship. Neither appears to have obtained the other party to the transaction they anticipated. This is unfortunate.

Based on the billing statements, services described therein, the supporting pleadings, and opposition, the court determines that a blended hourly rate of \$350.00 for ten hours of work is a fair and appropriate fee for the legal services provided. The court approves fees in the amount of \$3,500.00 and disallows all amounts in excess thereof.

The court also approves the \$5.05 in costs, which is for UPS delivery charges. September 16, 2014 expense on October 1, 2014 billing statement; Exhibit A, Dckt. 119 at 8.

TRUST ACCOUNT MONIES

In reviewing the billing statements, unauthorized payments to Applicant for deposit in the trust account are disclosed.

\$2,000.00	8/22/2014	Exhibit A, Dckt. 119 at 6
\$1,500.00	9/19/2014	Exhibit A, Dckt. 119 at 9
\$1,000.00	10/07/2014	Exhibit A, Dckt. 119 at 11

Debtors have not provided this court with any authority for them to transfer property of the estate to a professional. Such transfers are inconsistent with the fiduciary duties of these Chapter 13 Debtors to the bankruptcy estate and a good faith prosecution of this bankruptcy case.

Notwithstanding the improper payment of property of the estate to Applicant, the court brings this Chapter of the case to a close, authorizing Applicant to disburse \$3,505.05 to his firm as final payment of the fees and costs incurred in representing the Debtors pursuant to 11 U.S.C. § 330, with the balance of the \$1,494.95 to be disbursed to the Chapter 13 Trustee, to be held for disbursement under a Chapter 13 Plan in this case (if one is prosecuted).

The disbursement of the fees is subject to disgorgement in the event that this bankruptcy case is administratively insolvent and payment in full of the fees would result in an overpayment of this chapter 13 administrative expense.

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 Law Office of Williams & Associates, P.C.; R. Todd Luoma,

attorney of record; 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 Law Office of Williams & Associates, P.C., R. Todd Luoma, attorney of record, is allowed the following fees and expenses as a professional of the Estate Employed by the Chapter 13 Debtor:

Fees in the amount of \$ 3,500.00
Expenses in the amount of \$ 5.05.

IT IS FURTHER ORDERED that all other fees requested in the application are not allowed by the court.

The fees and costs are allowed pursuant to 11 U.S.C. § 330 as final fees and costs, subject to disgorgement in the event that this bankruptcy case is administratively insolvent and payment in full of the fees would result in an overpayment of this chapter 13 administrative expense.

IT IS FURTHER ORDERED that the Applicant is authorized to disburse from its trust account from the retainer monies provided by Debtor the \$3,505.05 in allowed fees and costs, and shall disburse the remaining \$1,494.95 directly to the Chapter 13 Trustee, who shall hold said monies for disbursement pursuant to a confirmed plan or as further ordered by the court.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2015. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

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

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

Elias Ortiz ("Debtor") filed the instant Motion to Confirm the Modified Plan on March 3, 2015. Dckt. 77.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 86. The Trustee objects on the following grounds:

1. Debtor is delinquent. It appears that debtor is unable to make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$475.00 under the terms of the proposed modified plan.
2. Debtor does not provide an adequate explanation for the reduction of income. The Trustee states that a comparison of Debtor's prior Schedule I (Dckt. 1) and the supplemental

Schedule I shows a decrease of nearly \$1,000.00 in monthly income. The Debtor states that he was injured at work which caused him to fall behind in payments but is back to steady and reliable employment. Given the fact that the Debtor remains at the same employer, the Trustee states that the Debtor has not adequately explained this reduction.

3. The Trustee is uncertain Debtor has the ability to make the proposed plan payments. Plan payments under the confirmed plan are \$1,580.00 total paid in through month 7, then \$790.00 for 31 months. However, Debtor is currently delinquent \$8,270.00 under the confirmed plan, with a Motion to Dismiss (Dckt. 72) pending.

This is the Debtor's fourth modified plan, which was filed in response to Trustee's Motion to Dismiss for delinquency. The Trustee questions whether Debtor will be able to make the proposed payments of \$455.00, when Debtor has been unable to make the payments under the confirmed plan or any proposed modified plan.

DISCUSSION

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

The Trustee's objections are well-taken. The Debtor's delinquency under the proposed plan indicates that the Debtor is unable to comply with the plan and make plan payments as required by 11 U.S.C. § 1325(a)(6). The delinquency is an independent ground to deny confirmation.

As to the Trustee's second objection, a review of the Debtor's prior and supplemental Schedule I shows a nearly \$1,000.00 reduction in income. While the Debtor does explain that an injury at work caused a reduction in hours, the Debtor states that he is back to work but does not supplement his Schedule I to reflect this. Absent explanation from the Debtor as to how he proposes to make the plan payments when his supplemental Schedule I shows a drastic decrease in income, the court does not believe the Debtor's projection is a true reflection of the Debtor's financial reality for the court to determine the feasibility of the plan. This is reason to deny confirmation.

Lastly, the fact that the Debtor has had to file four modified plans in order to cure the delinquencies from the prior plans raises serious concerns over whether the Debtor is able to make all the payment under the plan. The \$8,270.00 in delinquency is substantial and shows the Debtor's inability to make plan payments. This raises concerns if any of these plans have been filed in good-faith when the Debtor has not been able to remain current on any of the plans. See 11 U.S.C. § 1322(a)(3).

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

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

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

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

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

55. 14-30673-E-13 **FERNANDO/SUSANA ORTIZ** **MOTION TO CONFIRM PLAN**
PLG-2 **Steven A. Alpert** **2-13-15 [[54](#)]**

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2015. By the court's calculation, 60 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.
--

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 13, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

56. 14-27179-E-13 MARK HECKERT
DPC-2 Michael David Croddy

OBJECTION TO CLAIM OF J AND L
TEAMWORKS, CLAIM NUMBER 9
2-13-15 [34]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2015. By the court's calculation, 60 days' notice was provided. 44 days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.)

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

The Objection to Proof of Claim Number 9 of J&L Teamworks is sustained and the claim is disallowed in its entirety.

David Cusick, the Chapter 13 Trustee ("Objector") requests that the court disallow the claim of J&L Teamworks ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to

be unsecured in the amount of \$94,098.60. Objector asserts that the claim has been filed outside the time allowed under Fed. R. Bankr. P. **3002(c) and that the Creditor does not provide proof of claim assignment.**

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

The deadline for filing a Proof of Claim in this matter was November 5, 2014. Dckt. 9. The Creditor's Proof of Claim was filed December 29, 2014. No order granting relief for an untimely filed proof of claim for Creditor has been issued by the court.

Additionally, a review of Proof of Claim No. 9 shows that the claim arises from medical services from Baron Memorial Hospital and Sierra Nevada Medical Imaging. However, as the Trustee points out, the Creditor does not provide any evidence that these entities transferred or assigned these claims to the Creditor. The Creditor only provides a letter directed at the court stating that they are collecting on those debts. This is not sufficient to show that the Creditor is, in fact, entitled to the claim.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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

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

The Objection to Claim of J&L Teamworks, Creditor filed in this case by David Cusick, Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 9 of J&L Teamworks is sustained and the claim is disallowed in its entirety/described portion disallowed.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2015. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

Sue Mariano ("Debtor") filed the instant Motion to Confirm the Modified Plan on February 17, 2015. Dckt. 114.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trainer, filed an objection to the instant Motion on March 30, 2015. Dckt. 122. The Trustee objects on the following grounds:

1. The Debtor is delinquent \$1,681.50 under the terms of the proposed modified plan.
2. Debtor has not filed the Supplemental Schedules I and J in support of the proposed increase in plan payments from \$1,137.00 to \$1,220.56. Debtor's prior Schedules I and J (Dckt. 94 and 95) indicate Debtor's monthly net income is \$1,650.86, but the Debtor proposes only to pay \$1,220.56.

DISCUSSION

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

The Trustee's objections are well-taken. The Debtor's delinquency under the proposed plan indicates that the Debtor is unable to comply with the plan and make plan payments as required by 11 U.S.C. § 1325(a)(6). The delinquency is an independent ground to deny confirmation.

As to the Trustee's second objection, a review of the Debtor's current Schedule I and J shows that the Debtor has a net monthly income of \$1,650.86. Dckt. 95. The Debtor does not provide explanation in the Motion nor her declaration why the proposed plan payments are approximately \$410.00 less than the net disposable income on Schedule J. The Debtor has not filed Supplemental Schedules I and J to reflect changes in income or expenses.

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

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

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

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

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

58. [13-33583](#)-E-13 SUE MARIANO
DPC-1 Charnel J. James

CONTINUED NOTICE OF DEFAULT AND
MOTION TO DISMISS CASE FOR
FAILURE TO MAKE PLAN PAYMENTS
1-16-15 [[110](#)]

Tentative Ruling: The Motion to Dismiss 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 16, 2015. By the court's calculation, 22 days' notice was provided.

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments 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 Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, served a Notice of Default and Application to Dismiss on December 19, 2014 pursuant to Local Bankr. R. 3015-1(g). Dckt 110.

Trustee argues that the Debtor has failed to make all payments due under the plan. As of January 15, 2015, payments are delinquent in the amount of \$2,455.75. An additional payment of \$1,137.00 will become due on January 25, 2015.

On February 17, 2015, the Debtor filed a Notice of Hearing and Opposition to the Notice, setting a hearing for 3:00 p.m. on March 10, 2015. Dckt. 112. The Debtor states that the Debtor was out of work for an unexpected medical condition. However, Debtor states that she is back to work and is currently proposing to amend her Plan to put her current, and to repay the arrears by increasing her monthly payment by \$83.56.

MARCH 10, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 14, 2015 to be heard in conjunction with the Motion to Confirm. Dckt. 121.

APPLICABLE LAW

Local Bankr. R. 3015-1(g) provides the following:

(g) Dismissal Due to Plan Payment Defaults.

- (1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.
- (2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.
- (3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either
 - (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or
 - (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.
- (4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.
- (5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing

a motion to dismiss the case. Such a motion may be set for hearing pursuant to either LBR 9014-1(f)(1) or (f)(2).

DISCUSSION

On April 14, 2015, the court denied the Debtor's Motion to Confirm because the Debtor remains delinquent in plan payments under the proposed plan and has not provided supplemental Schedules to properly reflect the Debtor's financial reality to properly determine the feasibility of the plan.

The Debtor remains \$1,681.50 delinquent in plan payments under the proposed plan. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Because of the proposed modified plan has been denied confirmation and the Debtor remains \$1,681.50 delinquent, the Motion to Dismiss is granted and the case is dismissed.

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 Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the case is dismissed.

59.	<u>15-20683</u> -E-13	DEREK WOLF Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-11-15 [<u>25</u>]
	DPC-1		

Final Ruling: No appearance at the April 14, 2014 hearing is required.

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

60.	<u>15-20384</u> -E-13	RANDAL MCKIM Eric John Schwab	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
	DPC-1		

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on March 2, 2015. By the court's calculation, 43 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. Debtor appeared at the First meeting of Creditors held on February 26, 2015 and asked for the hearing to be continued to a future date. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to March 26, 2015.
2. The Debtor has failed to provide the Trustee with a tax transcript of his/her Federal income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, pursuant to 11 U.S.C. § 521(e)(2)(A)(1); Fed. R. Bankr. P.

4002(b)(3). This is required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

3. Debtor's Plan (Dckt. 11) is blank except for the case number located on page 1. It does not call for any payments, proposed to pay any creditors, and is not signed or dated by the Debtor.

On March 26, 2015, the Debtor filed an amended plan and accompanying Motion to Confirm the Amended Plan. Dckt. 26 and 29. Therefore, seeing as there is a new superseding plan awaiting confirmation, the instant Objection is overruled as moot.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is overruled, the Debtor having filed an Amended Plan on March 26, 2015 (Dckt. 29), a *de facto* dismissal of the prior plan to which this Objection was filed.

61. [15-20684](#)-E-13 PAUL/DONNA CRITTENDON
DPC-1 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-11-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to complete Form B22C. The Debtor's Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). According to Form B22C, the Statement of Current Monthly Income, Line #5, the Debtor's listed ordinary and necessary business expenses of \$1,119.00. Debtor has failed to properly complete boxes 5 through 46 on Form B22C.

Additionally, adding the business expenses of \$1,119.00 back into the calculation, the Trustee calculated an annualized increase of \$13,656.00, which brings line 20b to \$72,636.00, exceeding the applicable median family income of \$63,745.00 found on line 20c.

The Trustee's objections are well-taken. The failure of the Debtor to properly complete Form 22C raises questions not only of the feasibility and viability of the proposed plan but even whether the Debtor even qualifies for relief under Chapter 13. The incomplete Form 22C indicates that this is not the Debtor's best efforts pursuant to 11 U.S.C. § 1325(b).

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

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

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

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

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

62. [15-20385-E-13](#) LUIS RODRIGUEZ
DPC-1 Pro se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-11-15 [[20](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

63. [14-30186](#)-E-13 EVANGELINA GARIBAY
CJJ-1 Charnel J. James

MOTION TO CONFIRM PLAN
2-13-15 [[55](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Confirm having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2015. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the First Meeting of Creditors held on March 5, 2015. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Chapter 13 Plan payments. The Debtor's Plan proposes Plan payments of \$4,39000 for 60 months. The Trustee requests that the Debtor clarify the correct Plan payment in the order confirming the Plan.

3. The Plan exceeds 60 months. It appears that the Plan exceeds the maximum length of time allowed under 11 U.S.C. § 1322(d). The Plan completes in 73 months as opposed to 60 months proposed. The Trustee assumes that the Plan payments are \$4,390.00 for 60 months, which totals \$263,400.00. The Debtor is proposing to pay the following through the Chapter 13 Plan: Class 1 on-going mortgage (9665 Oakleaf way) \$1,525.60 (4.3% Trustee compensation totals \$1,594.15 for 60 months totals \$95,649.00); Attorney fees \$2,500.00; Ally Bank \$5,393.53 @ 4% interest totals \$5,959.80; 100% dividend to unsecured creditors (Total unsecured debt \$23,970.00). The grand total of such money owed being \$267,701.20, evidencing the extended duration of the Plan.

The Trustee's objections are well-taken.

As to the first objection, the continued Meeting of Creditors took place on April 3, 2015. According to the Trustee's report, the Debtor appeared. Therefore, the objection is resolved and overruled.

The second objection appears to be a mere scrivener's error on the part of the Debtor, omitting a decimal in the plan payment amount. This could be corrected in the order confirming.

However, the Trustee's third objection raises concerns over the feasibility of the plan. The court's own calculation also determined that the plan would complete in excess of 60 months which is the maximum plan term permitted by 11 U.S.C. § 1322(d). The Debtor's plan cannot be confirmed when it would take longer than 60 months to complete the entire plan based on the proposed claims and plan payments. Therefore, the objection is sustained.

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

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

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

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

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

65. [15-20791](#)-E-13 SHIRLEY STEELE
DPC-1 Pro se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
3-11-15 [[43](#)]

Final Ruling: No appearance at the April 14, 2015 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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

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

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

66. [14-31793](#)-E-13 LAURA ESPINOZA DE JAIMES
MB-1 Michael Benavides

MOTION TO CONFIRM PLAN
2-24-15 [[37](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2015. By the court's calculation, 15 days' notice was provided. 42 days' notice is required.

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

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

Laura De Jaimes ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 24, 2015. Dckt. 37.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 30, 2015. Dckt. 52. The Trustee objects stating that the Debtor has not properly signed the Plan, declaration or certificate of service. The Debtor fails to type her name under the "/s/" signature line.

The Trustee directs the court to Local Bankruptcy Rule 9014-1(c) for this objection. Because in some cases, both in this District and others, the "/s/ signature" procedure has been abused and purported signatories have later contended they never saw or signed the documents, close following of the rules allowing non-wet signature documents to be filed must be closely followed. FN.1.

FN.1. For this judge, it has long been a mystery as to why attorneys do not have the wet signature scanned in and used to replace the computer generated "/s/ signature." If so, then that image of the signature becomes the original and the court is responsible for maintaining the original in its file. L.B.R. 9014-1(c)(1)(D) and (d). Additionally, it precludes a later contention that the signatory did not see and sign the document, unless the contention is that the attorney forged the person's signature.

DISCUSSION

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

Pursuant to Local Rule 9004-1(c), the signature of a non-registered user may be through the use of electronic signature. Specifically, Local Bankr. R. 9004(1)(c)(1)(B)(iii) states:

(iii) Through the use of "/s/ Name" or a software-generated electronic signature in the signature block where signatures would otherwise appear. Electronically filed documents on which "/s/ Name" or a software-generated electronic signature is used to indicate the signatures of persons other than the registered user shall be subject to the requirements set forth in Subparts (C) and (D) below.

Nowhere in the language of the rule is there a requirement for the name of the person signing to be underneath the "/s/." In fact, the way the rule reads

states that the person's name should be next to the "/s/" rather than underneath - exactly the way the Debtor signed the instant documents.

Unlike the previous plan where the Debtor failed to sign using "/s/" and then her name, the Debtor is properly using electronic signature. The Trustee misreads the requirement of electronic signatures for non-registered users and is therefore overruled.

It appears that the Trustee has focused on the following portion of Local Bankruptcy Rule 9014-1(c) (emphasis added),

"(c) Signatures Generally. All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona. Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature."

The Trustee is correct, when there is an actual wet signature, the signatory's name must be typed underneath the "scrawled signature." This insures that the person filing the document has verified the person who is signing it. However, when the "/s/ signature" is used, there does not need to be a redundant second typed name under the typed "/s/ signature."

Therefore, with no further objections and good cause, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on February 24, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.