

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge
Sacramento, California

April 22, 2014 at 2:00 p.m.

1. [11-48305](#)-C-13 JOHN/DARLENE DOERR CONTINUED MOTION TO DISMISS
TSB-1 Peter G. Macaluso CASE
1-22-14 [[179](#)]

Continued to May 6, 2014 pursuant to AMENDED CIVIL MINUTE ORDER (Dkt. 218)

2. [14-21205-C-13](#) JOHN/PATRICIA MELMS
BHT-1 Douglas B. Jacobs
Thru #3

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
3-20-14 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 20, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Secured Creditor, U.S. Bank National Association, objects to confirmation of Debtors' plan based on the following:

Creditor is the holder of a first Deed of Trust on Debtors' real property located at 3070 Snowbird Drive, Chico, California. Creditor disputes the amount of pre-petition arrears due to it under Debtors' Chapter 13 Plan. The plan provides that arrears due pre-petition total \$2,500. However, Creditor asserts that the amount in default is approximately \$19,411.50. To provide for the correct amount of arrears over 60 months, Debtors would need to increase their monthly plan payment by a minimum of \$281.86 per month.

The court's decision to deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) (5) (B) (ii). 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 17, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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, having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Secured Creditor, Wells Fargo Bank, N.A., objects to Debtors' plan on the following grounds:

1. Creditor is the holder of a promissory note and senior deed of trust against real property located at 1280 Virage Lane, Chico, California.
2. The plan does not adequately provide for the arrearage amount due. 11 U.S.C. § 1325(a)(5)(B)(ii). The plan does not cure the pre-petition arrears due to Creditor. The actual arrearage amount will be disclosed in the proof of claim, to be filed by June 11, 2014.
3. The proposed plan is providing less than the arrearage due and is improperly attempting to modify the loan, in violation of 11 U.S.C. § 1322(b)(2).
4. The plan is not feasible under 11 U.S.C. § 1325(a)(6), as Debtors will not be able to make all payments due under the plan. Schedule J appears to be superficially low, resulting in an unrealistic disposable income amount. Debtors lack sufficient disposable income to fund the Plan.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

1. The filed plan proposes to pay \$2,500 to cure the arrears

owed on the property.

2. Debtors are making a good faith attempt to pay the arrears in full and should the arrears be more than included in the plan, Debtors will seek a modification.

Discussion

The court's decision to sustain the objection and deny confirmation. First, the court is sustaining BHT-1 (Dkt. 20), Objection to Confirmation by U.S. Bank National Association, at the hearing on April 22, 2014 and; therefore, the plan is not going to be confirmed on that basis alone. Second, the court is concerned that Debtors are not adequately disclosing their expenses on Schedule J. The court cannot determine whether a plan is feasible unless it is confident that schedules expenses are properly disclosed.

The following expenses are reported on Debtors' Schedule J (Dkt. 1):

Expense	Amount
Electricity/heat/gas	\$150.00
Water/sewer/garbage	\$19.00
Telephone/Cell phone	\$100.00
Cable/Internet	\$70.00
Food & Housekeeping	\$420.00
Clothing/laundry/dry cleaning	\$45.00
Personal care products	\$10.00
Transportation	\$100.00
Vehicle Insurance	\$120.00
Boat	\$268.00

Debtors' Schedule J further discloses that there are three dependent sons living at home with Debtors, aged 15, 17, and 19. Debtors' Schedule D (Dkt. 1) discloses the main residence located at 1280 Virage Lane, Chico, California; a rental property located at 3070 Snowbird Drive, Chico, California; and a 2006 Glastron boat. Monthly payments for the boat are represented on Schedule J. Debtors did not include the mortgage payments due on either of the real properties on Schedule J or an associated homeowner's insurance or maintenance costs. Debtors include business income from their rental property at Line 8a of Schedule I, but do not disclose any business expenses associated with their rental property on Schedule J. Debtors further assert \$0.00 in monthly expenses for health insurance and do not explicitly report that health insurance is deducted from payroll on Schedule I. Overall, the expenses reported appear low for a family of five with three teenage sons.

The court takes issue with Debtors' representation that vehicle insurance totals \$120.00 per month when Debtors' disclose the following five

vehicles on Schedule B: 2004 Scion, 1987 Mazda B22, 1989 Mazda B22, 1953 Buick Special, and 2001 Saturn SL. The court is also not entirely persuaded, without further explanation, that entertainment and recreation costs total \$0.00 per month for a family of five.

Schedule I discloses that both Debtors are employed, but only lists income for Debtor 1. If Debtor 2 is employed, Debtors should disclose the employment and any resulting income.

The court is concerned that the petition prepared and signed under penalty of perjury is misrepresenting Debtors' actual monthly expenses and income and may not have been made in good faith.

Before the court can consider confirmation of Debtors' plan, Schedules I and J need to be amended to reflect accurate amounts or Debtors need to provide the court with a Declaration adequately addressing the concerns set forth herein.

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.

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 25, 2014. 42 days' notice is required. That requirement was met.

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

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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 20, 2014 is confirmed, and 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.

5. [13-36013](#)-C-13 JOHN BARTON
KK-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY GREEN TREE SERVICING,
LLC
3-14-14 [[26](#)]

CASE DISMISSED 3/25/14

Final Ruling: The case having previously been dismissed on March 25, 2014, 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 of Plan 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 18, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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 having filed an opposition, 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 tentative decision is to overrule the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the ground that the Plan relies on pending motion. The Debtor cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value Collateral of Greentree, SS-1 which is set for hearing on April 8, 2014. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

Debtor's Response

The Debtor responds to the Chapter 13 Trustee's objection to confirmation and asserts that the Chapter 13 Trustee's objection is moot. At the time of the Trustee's objection (March 18, 2014), the Motion to Value Collateral of Greentree, SS-1 was pending and had not yet been ruled upon. That motion was considered by the court and granted on April 8, 2014. Accordingly, the Trustee's objection is now moot and the Debtor requests that the court confirm her Plan.

Debtor's assertion is correct. The Motion to Value the secured claim of Green Tree Servicing, LLC was granted per Civil Minutes Dkt. 38. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Chapter 13 Trustee's objection is overruled and the Plan is confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on February 11, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [12-34323](#)-C-13 MICHAEL WILSON AND BROOKE MOTION TO MODIFY PLAN
MPW-2 HENNESSY 3-4-14 [[47](#)]
Pro Se

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2014. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified 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. No appearance required. The court makes the following findings of fact and conclusions of law:

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 Modified 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 Modified Chapter 13 Plan filed on March 4, 2014 is confirmed, and 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.

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on March 24, 2014. 28 days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 for Consent to Enter into Loan Modification Agreement is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with Ocwen Loan Servicing, LLC concerning real property commonly known as 4421 Robertson Avenue, Sacramento, California. The new principal balance on the loan will be \$251,680.01 with an interest rate of 3.772%. The loan modification is attached in Exhibit A, Docket No. 37.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration and exhibits filed in this matter provide much of the information.

There being no objection from other parties-in-interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion for Consent to Enter into Loan Modification Agreement is granted.

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

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

The Motion to Approve the Loan Modification filed by 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 to Approve Loan Modification is granted and Debtor(s) are authorized to enter an agreement amending the terms of their loan with Ocwen Loan Servicing, LLC, which is secured by the real property commonly known as 4421 Robertson Avenue, Sacramento, California, and such other terms as state in the Modification Agreement filed as Exhibit A, Docket Entry No. 37, in support of the Motion.

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, respondent creditors, and Office of the United States Trustee on March 12, 2014. Twenty-eight days' notice is required. That requirement was met.

Final Ruling: 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 court's decision is to grant the Motion to Avoid the Lien. No appearance required. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Southern Wine & Spirits of Northern California for the sum of \$2,660.00. The abstract of judgment was recorded with Sacramento County on July 9, 2012. That lien attached to the Debtor's residential real property commonly known as 5406 Waterville Way, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$285,000 as of the date of the petition. The unavoidable consensual liens total \$209,756 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a) (2) in the amount of \$75,244 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 Southern Wine & Spirits of Northern California, Sacramento County Superior Court Case No. FS11564394, Document No. 20120709, recorded on July 9, 2012, with the Sacramento County Recorder, against the real property commonly known 5406 Waterville Way, Sacramento, California, is avoided 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.

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 March 5, 2014. 42 days' notice is required. That requirement was met.

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

The Motion to Confirm the Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The 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 March 5, 2014 is confirmed, and 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.

11. [14-21136](#)-C-13 JOSE/ELIZABETH JACOB
MBB-1 Bert M. Vega
Thru #12

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
3-20-14 [[32](#)]

CASE DISMISSED 3/24/14

Final Ruling: The case having previously been dismissed on March 24, 2014, 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 of Plan 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.

12. [14-21136](#)-C-13 JOSE/ELIZABETH JACOB
NLE-1 Bert M. Vega

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
3-18-14 [[28](#)]

CASE DISMISSED 3/24/14

Final Ruling: The case having previously been dismissed on March 24, 2014, 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 of Plan 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 21, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, American Honda Finance Corporation, objects to confirmation of Debtor's plan based on the following:

1. Creditor has a claim secured by a PMSI in a 2013 Honda Civic arising from an Automobile Financing Agreement entered on or about July 8, 2013. The total amount of the claim is \$23,288.15.
2. Debtor acquired the vehicle and incurred the debt securing the vehicle within 910 days prior to the date of the filing of the petition and it was acquired primarily for the personal, family, or household purposes of Debtor; therefore, 11 U.S.C. § 506(a) does not apply to paragraph (5) of 11 U.S.C. § 1325, and the secured claim must be paid in the full sum of \$23,288.15.
3. Per 11 U.S.C. § 1325(a) (1) (C), Creditor has an allowed claim secured by personal property which is attributable to the purchase of such property by the Debtor. Pre-confirmation adequate protection payments must be paid to the Chapter 13 Trustee for the benefit of creditor, sufficient to provide adequate protection to Creditor during the period of the

plan.

4. The proposed plan designates and elects to pay only 4% interest rate towards the secured claim. This is a rate lower than what is allowed in the underlying Financing Agreement (15.84%).
5. The plan fails to provide for the present value of Creditor's secured claim by not applying the proper formula discount rate consistent with 11 U.S.C. § 1325(a)(5)(B)(ii) and *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 (2004). Under *Till*, the court is to apply the prime-plus formula to determine appropriate rate of interest. Creditor argues the upward adjustment to 6.24% is warranted based on risk of default and the life of the plan extending beyond the original terms of the not.

Discussion

Creditor objects that it is not receiving the monthly adequate protection payments as Debtor asserts that the Creditor's claim does not arise from a PMSI loan. The objection to confirmation on this basis is sustained.

As for the the interest rate, Courts in the Eastern district have interpreted *Till* to require the use of the formula approach to determine appropriate rate of interest. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005). The court agrees with *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of the case plus a risk adjustment. The prime rate in effect at the commencement of this case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate is common. Here, Debtor provided for a 4% interest rate in the proposed plan. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. § 1325(a)(5)(B)(ii).

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.

14. [13-24843](#)-C-13 ROBERT/KATHLEEN PECK
SDB-2 W. Scott de Bie
Thru #15

MOTION TO APPROVE LOAN
MODIFICATION
3-18-14 [[58](#)]

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on March 18, 2014. Twenty-eight days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 for Consent to Enter into Loan Modification Agreement is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with J.P. Morgan Chase Bank, N.A. concerning real property commonly known as 615 Oak Haven Road, Auburn, California. The new principal balance, including interest, taxes, and insurance on the loan will be \$235,176.70 with an interest rate of 3.00%. The monthly payment shall be \$1,297.92. The loan modification is attached in Exhibit C, Docket No. 61.

There being no objection from other parties-in-interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion for Consent to Enter into Loan Modification Agreement is granted.

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

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

The Motion to Approve the Loan Modification filed by 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 to Approve Loan Modification is granted and Debtor(s) are authorized to enter an agreement

amending the terms of their loan with J.P. Morgan Chase Bank, N.A., which is secured by the real property commonly known as 615 Oak Haven Road, Auburn, California, and such other terms as state in the Modification Agreement filed as Exhibit C, Docket Entry No. 61, in support of the Motion.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2014. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Modified 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 Trustee, having filed an opposition, and the Debtors, having filed a response to the Trustee's opposition, the court will address the merits of the motion. 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. It appears the Plan fails the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtors' Schedule C filed April 9, 2013 reflects \$2,166.00 in non-exempt equity. The Debtors propose to pay \$0.00 to unsecured creditors.
2. Debtor has not authorized payments to unsecured creditors under the confirmed plan. Debtor proposes to reduce the percentage to unsecured creditors from 0.40% to 0% where the Trustee has already disbursed 0.40%.

Debtors' Response, filed 04/14/14 (Dkt. 70)

The Debtors respond the Chapter 13 Trustee's opposition and provide the following:

1. Debtors acknowledge there is non-exempt equity in the undeveloped lot and have filed an amended Schedule C exempting the equity up to the amount allowed under CCP § 703.140(b)(5). The remaining non-exempt equity is not \$581.00.

2. Debtors propose that the plan be extended one month, to forty-nine months, so that an additional payment of \$862.00 will satisfy the non-exempt amount. Debtors propose that this be stated in the order confirming the plan.

Discussion

While Debtor proposes to remedy the Trustee's concerns regarding non-exempt equity and liquidation analysis, there remains the issue of authorizing payments to unsecured creditors under the confirmed plan. Until this issue is addressed, the court is not prepared to confirm the modified plan.

The modified Plan does not comply with 11 U.S.C. §§ 1322 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 Modified Chapter 13 Plan 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

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, creditors, Chapter 13 Trustee, and Office of the United States Trustee on April 8, 2014. Fourteen days' notice is required. That requirement was met.

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 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Extend the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case pending within the last twelve months. Debtor's first bankruptcy case (No. 13-36146) was filed on December 30, 2013 and dismissed on March 26, 2014. Debtor's current case was filed on March 25, 2014. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Debtor proposes that the provisions of § 362(c) (3) (A) do not apply because Debtor did not have a case dismissed within one-year prior to filing the instant case. Debtor's previous case was dismissed via order of the court one day after the second case was filed. However, the code provisions state that the stay will expire on the 30th day after the filing of the second case if the first case was "*pending* within the preceding 1-year period but was dismissed." 11 U.S.C. § 362(c) (3) (A). Here, the first case was pending within the one-year period preceding the filing of the second case and it was dismissed.

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 a previous case was dismissed for failure to file documents as required by the Code or the

court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 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, the presumption of bad faith arises because Debtor's previous case, which was pending within the 1-year period preceding the instant case, was dismissed because Debtor did not comply with document filing requirements and provided no excuse.

Debtor states the instant case was filed in good faith. During the first case, Debtor was unrepresented and was not adequately advised as to the Debtor's rights and responsibilities to the Court and Trustee in the prosecution of the case. Now Debtor has obtained counsel, which will greatly facilitate the administration of the case.

Debtor has offered clear and convincing evidence to rebut any presumption of bad faith. Debtor has demonstrated a change in circumstances from the last filing that indicates to the court that Debtor will be successful in completing a plan.

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

17. [13-30950](#)-C-13 JUAN/EVITA MORENO
DBJ-2 Douglas B. Jacobs
Thru #18

MOTION TO APPROVE LOAN
MODIFICATION
3-6-14 [[51](#)]

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on March 6, 2014. Twenty-eight days' notice is required; that requirement was met.

Final Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 for Consent to Enter into Loan Modification Agreement is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with PNC Bank, N.A. concerning real property commonly known as 179 Mandalay Court, Chico, California. The new principal balance, including interest, taxes, and insurance on the loan will be \$175,546 with an interest rate of 5.5%. The monthly payment shall be \$1,267. The loan modification is attached in Exhibit C, Docket No. 54.

There being no objection from other parties-in-interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion for Consent to Enter into Loan Modification Agreement is granted.

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

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

The Motion to Approve the Loan Modification filed by 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 to Approve Loan Modification is granted and Debtor(s) are authorized to enter an agreement amending the terms of their loan with PNC Bank, N.A., which is

secured by the real property commonly known as 179 Mandalay Court, Chico, California, and such other terms as state in the Modification Agreement filed as Exhibit C, Docket Entry No. 54, in support of the Motion.

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 March 6, 2014. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered 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. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. 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 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, Debtors' Chapter 13 Plan filed on March 6, 2014 is confirmed, and counsel for the Debtors 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.

Local Rule 9014-1(f) (2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 31, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Incur Debt. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This motion seeks permission to incur a vehicle loan in the amount of \$17,352.22. The loan is set at a 9.390 interest rate, with monthly payments due of \$364.90 for 60 months. \$20,269.00. Debtor's Buick recently broke down and debtor is driving a rental until her loan is approved.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2010 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 Chapter 13 Trustee filed a statement of non-opposition to the court granting Debtor's Motion. There being no other opposition and the court being satisfied that Debtor's Motion contains the material provisions of the loan and there being no opposition, the motion is approved.

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 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 Motion to Incur Debt is approved and Debtor(s) is permitted to enter into a credit agreement with Sacramento Credit Union to finance the purchasing of a new vehicle at the terms described in the document located at Exhibit A, Docket Entry No. 105.

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, respondent creditors, and Office of the United States Trustee on July 2, 2013. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). A creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Avoid a Judicial Lien is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Vicki Lee Hinkel for the sum of \$200,000. The abstract of judgment was recorded with Sacramento County on November 17, 2011. That lien attached to the Debtor's residential real property commonly known as 1213 Blackberry Circle, Folsom, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$340,000 as of the date of the petition. The unavoidable consensual liens total \$249,990 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

Creditor's Opposition, filed 04/07/14 (Dkt. 26).

Creditor appears to be Debtor's former spouse and alleges the following in response to the Motion:

1. Debtor has not attempted to pay Creditor any money.
2. A lien exists on a timeshare in South Lake Tahoe.
3. A lien exists on a Clinton County property.
4. Debtor is part owner of Most Na Soci and Ponikve, in Slovenia. Both are residential properties.

Discussion

As to the property located at 1213 Blackberry Circle, Folsom, California, the evidence supports the court avoiding the judicial lien of Vicki Lee Hinkel as her judicial lien impairs Debtor's exemption in the equity of the property. No objection raised calls into question the validity

of the property value or Debtor's entitlement to the claimed exemption.

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). Therefore, the court's decision is to grant the Motion to Avoid the Judicial Lien.

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 Vicki Lee Hinkel, Sacramento County Superior Court Case No. 09FL08378, Document No. 20111117, recorded on June 6, 2011, with the Sacramento County Recorder, against the real property commonly known 1213 Blackberry Circle, Folsom, California, is avoided 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on March 26, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on March 20, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor's plan does not reflect best efforts under 11 U.S.C. § 1325. Schedule J lists debtor's net income as \$2,455.00; however, Debtor's plan payments are only \$100.00 per month.
3. Debtor may not be able to make the plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the payment of \$100.00 per month is insufficient to fund the Class 1 on-going mortgage payment.
4. The following documents are incomplete: Debtor did not use new Official Form B6I and B6J; Debtor did not choose and check the appropriate box for whether or not additional provisions are attached to the plan; the value of debtor's real property on Schedule A differs from the value listed on Schedule D; Schedule F was marked that Debtor has no creditors holding unsecured claims. IT is not clear if this Schedule was completed properly.

5. Debtor's plan does not pay unsecured creditors what they would receive in a chapter 7 and does not pass the liquidation test under 11 U.S.C. § 1325(a) (4).

Debtor's non-exempt equity totals \$4,860 and Debtor is proposing 0% dividend to unsecured creditors. Debtor is married and his spouse is not included in the bankruptcy. Debtor has not filed a Spousal Waiver for the use of California State Exemptions.

Debtor has claimed his interest in furs and jewelry having an aggregate value of \$450.00. Debtors lists these items as exempt under C.C.P. § 703.140(b) (3); however, this exemption does not include furs and jewelry.

6. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
7. Debtor did not provide Trustee with Business Documents, including Questionnaire, two-years of tax returns, six-months of profit/loss statements, six-months of bank statements, proof of license and insurance or written statements that no such documentation exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (I). A business questionnaire and request for documents was mailed to Debtor on February 25, 2014.

The court's decision to deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. The court shall issue a minute order substantially in the following form holding that:

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

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

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

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 6, 2014. Forty-two days' notice is required. That requirement was met.

Tentative Ruling: 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 Trustee having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to deny the Motion to Confirm the Plan.

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee objects to confirmation of Debtor's plan because Debtor may not be able to may the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). The First Amended Plan calls for payments of \$1,050 per month beginning the fourth month, March 2014. No payments are to be made for the months of December 2013, January 2014, or February 2014. The case was converted from Chapter 7 on November 15, 2013.

Debtor's amended declaration states that the cause for no payments in the first three months was "confusion as to when [he] was to being making [his] Chapter 13 payments to the Trustee." See Debtor's Declaration, Dkt. 62, pg. 3. Debtor's initial plan was filed January 2, 2014 and called for payments of \$465.00 per month for 60 months (Dkt. 35). Debtor does not disclose where the disposable income of \$475.00 per month proposed in the initial plan went for the first three months since conversion. Debtor's monthly net income on Schedule J was \$475.00, filed January 3, 2014. Trustee is not certain Debtor can make plan payments as proposed.

The court's decision is to sustain the objection filed by Chapter 13 Trustee and deny confirmation of Debtor's plan at this time. The court shares the Trustee's concerns regarding Debtor's ability to make the payments as proposed and encourages Debtor to either adjust his payments or provide explanation sufficient enough to remedy the deficiencies highlighted by the Trustee.

The Plan does not comply with 11 U.S.C. §§ 1322 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.

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 March 6, 2014. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered 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. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. 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 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, Debtors' Chapter 13 Plan filed on March 6, 2014 is confirmed, and counsel for the Debtors 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.

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 24, 2014. 35 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3), (d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). If the respondent and other parties in interest do not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) this will be considered 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. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. 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 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, Debtors' Chapter 13 Plan filed on February 24, 2014 is confirmed, and counsel for the Debtors 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.

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 26, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for three reasons.

First, Section 2.06 of the Debtor's Plan indicates that attorney fees of \$6,000 have been charged in this case. The Disclosure of Attorney Compensation Form 2016 (Dckt. No. 12, page 33), indicates that \$5,000 has been charged. The Rights and Responsibilities, Dckt. No. 14, indicates total fees of \$4,000.00. The Trustee objects to the award of attorney fees on confirmation unless the fee amount is consistent.

Second, Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and Debtor appears to be married based on the Statement of Monthly Income, Dckt. No. 12. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(2) (2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

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

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable,

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

The Trustee has had not found any such waiver failed with the court after reviewing the docket. The Trustee's Objection to Exemption, NLE-2, is set for hearing on April 29, 2014.

Third, whether the Debtor can actually make the lump sum payment called for by the plan is in question. The plan calls for the sale of the business within 90 days. The Debtor's business is located on leased premises where the landlord has filed for relief, Dckt. No. 22, and the Motion for Relief for the property is set for April 8, 2014, Dckt. No. 33.

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.

Local Rule 3007-1(b)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2014. By the court's calculation, 32 days' notice was provided. 30 days' notice under Local Bankruptcy Rule 3007-1(b)(2) is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection to Proof of Claim number 1 of Ally Financial, and disallow the claim in its entirety. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 1 on the court's official claims registry, asserts a \$9,294.81 claim. The Debtor objects to the Proof of Claim on the basis that Debtor sold the vehicle which secures repayment of Ally Financial's claim as exempt property in Debtor's Chapter 7 Case. The proceeds were sufficient to pay to Ally Financial to pay its claim in full.

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).

Here, Ally Financial f/k/a/ GMAC filed a timely Proof of Claim, indicating that the basis for the claim is automobile financing. Claimant attaches supporting documents of a Refinancing Agreement showing that the

subject property is a 2007 GMC Yukon, along with a Certificate of Title showing that title to the vehicle was transferred to the Debtor. Debtor testifies in her Declaration that the vehicle was sold during her Chapter 7 case as exempt property, and that the proceeds were paid to Ally Financial to fully satisfy its claim. Dckt. No. 257.

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 Ally Financial f/k/a/ GMAC filed in this case 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 objection to Proof of Claim number 1 of Ally Financial is sustained and the claim is disallowed in its entirety.

Local Rule 3007-1(b)(2) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2014. By the court's calculation, 32 days' notice was provided. 30 days' notice under Local Bankruptcy Rule 3007-1(b)(2) is required. That requirement was met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to overrule the Objection to Proof of Claim without prejudice. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 5 on the court's official claims registry, asserts a \$2,734.32 claim. The Debtor objects to the Proof of Claim on the basis that Debtor has satisfied the claim filed by the Placer County Tax Collector in full.

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).

Here, Debtor states that Claimant has informed Debtor's Counsel that the claim has been satisfied. On December 16, 2011, Ms. Jenny McMurtry, Deputy Treasurer Tax Collector with the Placer County Tax Collector filed a claim for property taxes in the debtor's real property located at 3125 Orchard Park Court, Loomis, California. Proof of Claim 5-1 appears to have been filed by the Placer County Tax Collector's Office. The Proof of Claim

form indicates that the basis for the claim is for delinquent taxes, the debt for which will increase as long as unpaid taxes continue to accrue for future years. Claimant has not withdrawn its claim or filed a declaration stating that the claim has been satisfied.

Debtor states that on February 3, 2014, Philip Rhodes, attorney for the debtor, spoke to Jenny McMurtry via telephone. The Motion asserts that "Ms. McMurtry stated that the property taxes had been paid, and continue to be current." ¶ 3, Motion, Dckt. No. 259. This statement, an out-of-court statement offered to prove the truth of the matter asserted, is hearsay for which no grounds for admissibility has been shown. Fed. R. Evid. 801, 802, 803, 804. Debtor attempts to introduce evidence that was merely relayed to Debtor's counsel, with no corroborating evidence in the form of a declaration or firsthand testimony from an apparent representative of the Claimant, to show that the claim has been paid in full. Debtor's counsel has no personal knowledge as to whether the claim has actually be satisfied or not. The hearsay statements offered are not admissible, and cannot serve as a factual basis on which Debtor can overcome the prima facie validity of the Placer County's Tax Collector's claim.

Additionally, Debtor states that the Declaration of Phillip Rhodes has been filed concurrently with Debtor's objection. There is no such declaration filed on the docket. Local Bankruptcy Rule 9014-1(d)(6) requires that every matter be accompanied with evidence, establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Debtor has not provided evidence of probative force, equal to the Proof of Claim, which the court can consider as grounds to disallow the claim. Thus, this objection is overruled without prejudice.

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

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

The Objection to Claim of the Placer County Tax Collector filed in this case 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 objection to Proof of Claim number 5 of he Placer County Tax Collector is overruled without prejudice.

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 5, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

REVIEW OF OBJECTION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee initially opposed confirmation of the Plan on the following grounds:

1. Debtor's original plan called for payments of \$1,396.43 per month for sixty months. Debtors' Amended Plan calls for payments of \$1,157.08 for sixty months. Debtors are delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,157.08 is due on March 25, 2014. The case was filed on October 29, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtors have paid \$2,796.43 into the plan to date, with the most recent payment made on January 7, 2014.
2. The Plan may not be proposed in good faith and may be causing unfair discrimination to creditors with unsecured claims under 11 U.S.C. § 1325(a)(3); and 11 U.S.C. § 1322(b)(1). *In re Sperna*, 173 B.#. 654 (9th Cir. BAP 1994). Section 2.15 of the Plan proposes 0% to unsecured claim holders. However, Debtor lists a Class 6 special unsecured debt in section 2.14 to ASC, and indicates that it is a student loan with a total claim amount of \$54,677.41.

3. Based on the special unsecured claim to ASC, the plan completes in 106 months, which exceeds the maximum time allowed under 11 U.S.C. § 1322(d).

MARCH 25, 2014 HEARING

The courts continued the hearing on the Motion to Confirm the Amended Plan to 2:00 p.m. on April 22, 2014. The court ordered that on or before April 1, 2014, the Debtors shall file and serve on the affected creditors and the Chapter 13 Trustee proposed amendments for the Class 6 claims, and any opposition shall be filed and served on or before April 15, 2014. Civil Minutes, Dckt. No. 67. At the hearing, the Trustee also confirmed that the delinquency had been cured and the Debtors are current.

A review of the docket shows that Debtors have not filed and served further proposed amendments for the Plan. The deficiencies articulated by the Trustee and court not having been resolved, 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 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.

29. [13-35786](#)-C-13 MELISSA INGLE
MMA-1 Mark Alonso
Thru #30

MOTION TO VALUE COLLATERAL AND
AVOID LIEN OF JPMORGAN CHASE
BANK, N.A.
4-8-14 [[42](#)]

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, respondent creditor, and Office of the United States Trustee on April 8, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 220 Maple Street, Suisun City, California. The Debtor seeks to value the property at a fair market value of \$190,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$258,521.91. Creditor JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$ 10,521.84. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The 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 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 JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 220 Maple Street, Suisun City, 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 \$190,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court continued the hearing on this matter from March 25, 2014, and ordered that the Debtor file and serve opposition, on or before April 1, 2014, and that on or before April 8, 2014, the Trustee to file a reply to Debtor's opposition, if any. Civil Minutes, Dckt. No. 91.

The Chapter 13 Trustee initially opposed confirmation of the Plan for the following reasons:

1. Debtor's plan may not be debtor's best effort under 11 U.S.C. § 1325(b). Debtor's projected disposable monthly income is \$2,859.11 (Schedule J) and debtor is proposing a plan payment of only \$2,447.69.
2. It does not appear that the plan provides for all of Debtor's projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b). On Schedule B, Debtor reports anticipated state tax refund of \$1,000.

On January 16, 2014, Trustee received Debtor and her non-filing spouse's 2012 Federal Tax Return. Debtor received tax refunds of \$11,118 from the Internal Revenue Service in 2012.

Based on the summary sheet on the Federal Return, it appears Debtor received \$3,723 from the State for the 2012 refund. This makes Debtor's total refund for 2012 \$14,841. If Debtor contributed the tax refunds into her household income, they would add an additional \$1,236 per month.

3. Debtor lists the claim of Chase Manhattan Mortgage in Class 1 of the plan. This is a mis-classification because there appears to be no equity in the property securing claim of Chase Manhattan Mortgage. The value of the real property (220 Maple Street, Suisun City, California) is \$159,723 (Schedule A, Dckt. 10) and senior line holder, Seterus, Inc., holds a lien totaling \$262,640 (Schedule D, Dckt. 10).

The claim should be provided for in Class 2 and Debtor should file a Motion to Value the secured claim.

4. Debtor and her counsel did not sign the plan.
5. Debtor is married but did not list her non-filing spouse on Statement of Financial Affairs #16.
6. Debtor reports on Form B22 that she has a household size of four (4); however, on Schedules I and J, Debtor lists only herself and non-filing spouse as a dependent. Based on Schedules I and J, it appear the household size should be two (2). Debtor did claim two (2) children on her 2012 Tax Return.
7. Debtor's plan may not pass Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor admitted at the First Meeting of Creditors that she has assets not disclosed on Schedule B. Debtor indicated that she and her spouse own a 2002 Honda CRV with 200,000 miles and a 2002 Ford F350 with 100,000 miles. Debtor state that both vehicles are in "good" condition. Debtor also indicated that her spouse has retirement accounts that remain undisclosed.
8. Debtor is \$2,447.69 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,447.69 is due on February, 2013. Debtor has paid \$0.00 into the plan to date.

FURTHER OPPOSITION BY TRUSTEE

Trustee filed further opposition on April 8, 2014. Dckt. No. 40. Debtor's counsel was present at the Trustee's Objection to Confirmation hearing on March 4, 2014, where Debtor's counsel asked the court continued the matter to allow the Debtor to respond to Trustee's objection. Debtor was to file a response no later than April 1, 2014. No such response was filed.

Further, Trustee states that it has a pending Motion to Dismiss, which was continued to April 16, 2014 for lack of payment.

Trustee's grounds for opposition to confirmation of the plan have not been addressed or resolved. 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on March 18, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. The case was originally filed as a Chapter 7 on October 8, 2013. Debtor converted to a Chapter 13 on January 24, 2014. The Disclosure of Compensation of Attorney for Debtor, Dckt. No. 1, provides that "for legal services, I have agreed to accept \$1,200.00; Prior to the filing of this statement I have received \$300.00; Balance Due \$900.00." This document was signed by Rajdep S. Chima, who is not the attorney of record in this case.

The Statement of Financial Affairs, Question #9, which was filed in the same date as the Petition, states that Debtors paid Rajdep S. Chima \$385.00 on September 25, 2013. Debtors filed the Chapter 13 Plan and Rights and Responsibilities on February 7, 2014, both documents state that Debtors paid their attorney \$1,200.00.

2. It is unclear whether or when the \$900.00 was paid to the attorney--whether it was paid before or after conversion from a Chapter 7, and whether it was paid after the petition before conversion, and whether the collection was appropriate considering the automatic stay and that attorney fees would be discharged in the

Chapter 7. Debtors have opted in to the guidelines for payment of attorney fees, which requires that the attorney cannot take any additional fees after February 7, 2014.

3. It appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors propose plan payments of \$241.33 for 60 months, with a 0% dividend to unsecured creditors. The monthly projected disposable income on Schedule J reflects \$20.15, therefore Debtors cannot make the payments proposed. Debtors admitted at the First Meeting of Creditors held on March 13, 2014, that they have an auto insurance expense of \$175.00 per month, but this is not listed on Schedule J.
4. Debtors' Statement of Financial Affairs is also incomplete. Debtors admitted at the Meeting of Creditors that they have been receiving social security income since 2010, and Felix Garcia has been receiving pension income since 2000; however, Debtor has not listed this prior income on Question #2 of the Statement of Financial Affairs.
5. It appears that the Plan is not Debtors' best effort, under 11 U.S.C. § 1325(b). Debtors are under median income and proposes plan payments of \$241.33 for 60 months with a 0% dividend to unsecured creditors. Debtors list 2 auto payments on Schedule J, in the amounts of \$177.80 and \$365.95.

The Debtor admitted at the First Meeting of Creditors held on March 13, 2013, that the payment of \$177.80 was for the 2000 Ford Ranger listed on Schedule D, which Debtor stated had been paid in full and is free and clear of any liens. Debtor also admitted that the payment of \$365.95 was for the 2003 Ford Ranger, which is being paid in Class 2 of the Plan and should not be listed on Schedule J. Joint Debtor also admitted at the First Meeting of Creditors that her son contributes \$300.00 to the household expenses, but this income is not listed on Schedule I.

6. Debtors have not used the new Official Form B 6I (Schedule I) and Official Form B 6J (Schedule J), which became the standard forms on December 1, 2013.

Based on the foregoing, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 20, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Objecting Creditor Schools Financial Credit Union ("Creditor") was the holder of three contracts secured by three different vehicles at the time of the filing of the bankruptcy petition. The vehicles are listed on Schedule B and the debts are listed on Schedule D. Two of the debts are provided for in the Chapter 13 Plan.

Creditor objects to confirmation of the Chapter 13 Plan filed on February 7, 2014 on the following grounds:

Objection to Treatment of Secured Claims

Creditor objects to the treatment of its secured claims under 11 U.S.C. § 1325(a)(5). The Chapter 13 Plan provides for two secured claims in Class 2. The claim listed for the 2003 Ford Ranger is listed as PMSI, claim amount of \$4716.75, interest rate of 3.5% and monthly dividend of \$85.81. The claim listed for the 2006 Ford Fusion is listed as PMSI, claim amount of \$7885.45, interest rate of 3.5% and monthly dividend of \$143.45.

Creditor states that it does not consent to inclusion of the claims in Class 2. Creditor contends that the automatic stay terminated by

operation of law on December 13, 2013 as to both vehicles pursuant to 11 U.S.C. § 362(h)(1)(B). Prior to the date of the hearing on these objections, the hearing on the motion for relief as to the 2003 Ford Ranger will be held. If relief is granted, then no payments will be made by the Chapter 13 Trustee on the claim and the vehicle will be sold.

The court docket reflects that the court ruled at the March 25, 2014 hearing on Creditor's Motion for Relief from the Automatic Stay that the automatic stay, as to the 2003 Ford Ranger Pickup, expired on December 13, 2013 pursuant to 11 U.S.C. § 362(h). The court noted that,

The conversion of the case from Chapter 7 to Chapter 13 did not cause the automatic stay to reimpose. Therefore, Creditor's repossession of the vehicle on January 6, 2014, was lawful and the stay remains lifted. The court [issues] an order denying the relief requested as moot because there is no automatic stay in place, as to the Debtors interest in the 2003 Ford Ranger. The court will further order that pursuant to 11 U.S.C. § 362(h) the automatic stay terminated as to the 2003 Ford Ranger on December 13, 2013.

Civil Minutes, Dckt. No. 91. The court determined that the Creditor's repossession of the vehicle was lawful and that the automatic stay under 11 U.S.C. § 362(h) has expired.

Additionally, the Creditor states that does not consent to the proposed treatment of its secured claims. It does not agree that the claim amounts are accurate. It does not consent to interest of 3.5% and it contends the amount of the monthly dividends is insufficient to pay the secured claims in full with interest.

On March 5, 2014 the Creditor filed a proof of claim for the debt secured by the 2003 Ford Ranger. The proof of claim is designated as claim number 3 on the Claims Register. The secured claim amount is listed as \$5296.09. Creditor argues that Debtors' proposed dividend of \$85.81 over 60 months is insufficient to pay the principal of the claim, and pay the claim plus interest. On March 5, 2014, Creditor also filed a proof of claim for the debt secured by the 2006 Ford Fusion. The proof of claim is designated as claim number 2 on the Claims Register. The secured claim amount is listed as \$8092.37. The proposed dividend of \$143.45 over 60 months is insufficient to pay the principal of the claim at 3.5% interest, and pay the claim at a higher rate of interest. Creditor contends that the appropriate amount of the dividend to pay \$8093 over 5 years at 3.5% is \$147.23, and it is \$152.72 for an interest rate of 5%.

Creditor submits that the applicable risk adjustment is 3%. Prior to the conversion of the case to chapter 13, both accounts had been already assigned for repossession due to the default by the Debtors in their contract payments.

The plan provides for a 3.5% interest rate, while Creditor seeks a higher interest rate. Creditor argues that this interest rate of 3.5% is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also

Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.), 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.5% risk adjustment, for a 4.75% interest rate. The court notes that Debtors' assigned interest rate is on the low end of the rate that would be customarily assigned to payments on claims on secured property in bankruptcy.

Creditor also argues that certain post-petition fees and costs have not been paid. In reference to the 2003 Ford Ranger, the Creditor has incurred postfiling costs for the repossession, inventory of the personal property and storage of the personal property. The plan proposes to substantially extend the terms of the contracts. According to the terms of the contract secured by the 2003 Ford Ranger, the last scheduled payment was October 28, 2016. The last scheduled payment on the contract secured by the 2006 Ford Fusion is July 25, 2015. Thus, the contract for the 2003 Ford Ranger would be extended approximately 29 months and the contract for the 2006 Ford Fusion would be extended 43 months.

Feasibility of the Plan

The Creditor contends that the plan does not comply with 11 U.S.C. § 1325(a)(6) and confirmation should also be denied on that ground. Creditor argues that the plan is not feasible as written. The plan is based on a trustee fee of 5%, interest rates of 3.5% and dividends that are insufficient to pay the secured claims. The proposed plan payment is \$241.33. The total of the Class 2 dividends is \$229.26, which is 95% of the plan payment. If the Trustee's fees increase during the next 5 years, there will be insufficient funds to pay the class 2 dividends. Furthermore, the proposed dividends are insufficient to pay the claims in full at 3.5%, and at an appropriate rate of interest.

Creditor argues that Debtors have not demonstrated an ability to make the plan payments. Creditor raises the issue of Debtors' filing of a fee waiver, and request to be permitted to pay the filing fees in installments, but Creditor is advised that this customary and should not be regarded as evidence of Debtors' ability to make payments under their proposed plan. Federal Rule of Bankruptcy Procedure 1006(b) allows Debtors to file an application to pay a filing fee in installments. Moreover, Federal Rule of Bankruptcy Procedure 1006(c) permits the an application for a waiver of a filing fee. A voluntary Chapter 7 petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. §1930(f), prepared as prescribed by the appropriate Official Form. The court rejected Debtors' application for a fee waiver, based on Debtors' income exceeding 150% of the U.S. Dept. of Health and Human Services' poverty guidelines. Dckt. No. 11.

Creditor also states that the Debtors did not make the post-petition monthly payments on two car loans in the total sum of \$2,502.85, and no

longer had funds on hand to pay the arrears on the loan secured by the 2003 Ford Ranger. Debtors did not file Amended Schedules I and J on the current forms after the case was converted to Chapter 13, which has also been noted by the Trustee's objection to the same plan.

Creditor additionally advances that the budget as listed on Schedule J is not realistic for a family of 2. On their tax returns for 2011 and 2012 the Debtors deducted an adult child as a dependent. At the meeting of creditors the Debtors stated that this adult child continues to reside with the Debtors. The Debtors stated that this child receives social security disability and food stamps but the food stamps are insufficient to pay for his food. The Debtors stated that they pay all of the utility costs for the household. The child does contribute \$300 per month to the rent expense of \$900.

On Schedule J the Debtors have listed \$200 per month for food. They have not listed any additional expense for household goods and personal care. They have listed 0.00 for clothing, laundry and dry cleaning, medical and dental expenses, transportation, recreation and auto insurance. Creditor argues that it is not realistic to believe that the debtors and their son will not incur any of these expenses in the next 5 years. Furthermore, the Debtors testified at the meeting of creditors on March 13, 2014 that they are paying some of these expenses currently. They stated they pay \$175.90 for auto insurance. They have three vehicles which are registered to the Debtors. For these vehicles there are expenses for gas, license fees to the Department of Motor Vehicles, routine maintenance, repairs for normal wear and tear as well as extraordinary repairs. At the meeting of creditors Mr. Garcia stated they have an estimate for \$2000 for transmission repairs to the 2006 Ford Fusion.

Lack of Clarity in Attorney Fee Agreement

Creditor states that it is unknown how much was actually paid by the Debtors to attorneys, to whom it was paid and when it was paid. Trustee raised a similar objection in his opposition to the confirmation of plan, filed as NLE-1, which the court is sustaining on this hearing date.

Creditor argues that the documents disclosing attorney compensation filed with the court are inconsistent. A Disclosure of Compensation of Attorney for Debtor was filed on October 8, 2013. The document bears the date of "10/4/2013" and the signature /s/ Rajdep S. Chima. The Disclosure states that the attorney has agreed to accept \$1,200.00, of which he has received \$300.00 and the balance due is \$900.00. In response to Question 9 of the Statement of Financial Affairs, which was also filed on October 9, 2013, the Debtors state they paid \$385 on 9/25/2013.

On February 7, 2014 the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys was filed. Dckt. No. 48. Page 3 of the document is dated 2/7/2014. It contains the following signatures: /s/ Felix Garcia; /s/ Ladora Garcia; and /s/ Charnel J. James. On page 3 it states the initial fees charged in this case are \$1200 and \$1200 was paid by the Debtor before the filing of the petition.

At the meeting of Creditors on March 13, 2014 the Debtors were questioned by the Creditor's counsel, Roxanne T. Daneri, and the Chapter 13 Trustee regarding the attorneys fees. Joint Debtor Ladora Garcia stated that they made one payment of \$380.00 before the filing of the petition. She

believes that \$900.00 was paid after the petition was filed. She stated that she did not have her record of payments with her. She did not know whether the checks were payable to Mr. Chima or Ms. James and the dates of the payments. Declaration of Robin Spitzer.

Creditor raises additional arguments about whether the collection of post-petition fee payments, called for by a contract for pre-petition legal services, can be dischargeable under 11 U.S.C. § 727. A discharge not having yet been entered in this case, and the actual nature of the legal services payments made by Debtors to their attorney being uncertain, this issue has not yet "come into play" in Debtors' case and the court will not deem the undetermined post-petition payments of attorney fees to be subject to disgorgement.

Good Faith Filing of Plan

Creditor contends that the Chapter 13 Plan does not comply with 11 U.S.C. § 1325(a) (3).

Good faith, under 11 U.S.C. § 1325(a) (3), is determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and
- 11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D.

Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982)).

Creditor submits that the lack of accuracy of the documents on file with the court is symbolic of the lack of good faith of the Debtors. Debtors not filing accurate schedules breaches obligations imposed by 11 U.S.C. §§ 521(a)(1), (a)(3) & (a)(4).

Debtors have three loans secured by three vehicles. Creditor asserts that Debtors did not accurately list these debts on Schedules B, D and J and the Statement of Financial Affairs. The Debtors did amend Schedule B to change which vehicle was being paid by the son. They did not file any amendments to the Schedules D and J and the Statement of Financial Affairs. Initially the Debtors listed the debt secured by the 2003 Ford Ranger as being paid by the son. This statement was made on Schedule B and in response to question 3 of the Statement of Financial Affairs. In accordance with their statements that the son was making the payments on the 2003 Ford Ranger, the Debtors did not list the payment for the 2003 Ford Ranger on Schedule J.

After the motion for relief was filed, the Debtors amended Schedule B to omit the reference to the son and placed the comment regarding the son after the listing for the 2000 Ford Ranger. Debtors did not amend the response to question 3 of the Statement of Financial Affairs to delete the reference to the son making the payments on the 2003 Ford Ranger, to correct the amount paid within 30 days of the petition or correct the account balance. Schedule D was not amended to show the correct principal balance. Debtors also did not amend Schedule J to list the payment for the 2003 Ford Ranger.

The balances listed for the debt on the Ford Ranger in Schedule D and in response to question 3 of the Statement of Financial Affairs are inconsistent. Debtors did not disclose that they had an adult son living in the house whom they had claimed as a dependent on their tax returns. In response to Question 2 of the Statement of Financial Affairs, Debtors listed only their income and they listed income for only 2012. They did not list any income for 2011 or 2013. They did not list the contributions to the household being made by their son.

Creditors also allege that Debtors made inaccurate and misleading statements in their Declarations filed in opposition to Creditor's Motion for Relief, in which they stated that their payments were current when they filed the petition. However, at the meeting of creditors, Debtors acknowledged that they had not made any payments since August 2013 on the loans secured by the 2003 Ford Ranger and the 2006 Ford Fusion. In their Declarations they stated that there were modifications made to the 2003 Ford Ranger to accommodate an "injury"; at the meeting of creditors, however, Debtors stated there were no modifications to the vehicle.

Debtors have not filed amended schedules on the official forms to establish an ability to make the plan payments. Debtors are retired and receiving social security income. There is no anticipation of a substantial increase in their income. Creditor argues that Debtors have not set forth a realistic budget that shows an ability to make the necessary payments under the plan. It appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6).

Based on the Creditors' concerns with the Plan, many of which are

underscored and affirmed by Trustee's Objection to Confirmation of the Plan, NLE-1, the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. 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.

33. [14-20794](#)-C-13 JACK CARPENTER
HSM-1 Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF
PLAN BY ALICE CARPENTER
3-19-14 [[20](#)]

CASE DISMISSED 3/24/14

Final Ruling: The case having previously been dismissed, the Objection to Confirmation of Plan by Alice Carpenter 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 of Plan 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 denied as moot, the case having already been dismissed.

34. [14-20794](#)-C-13 JACK CARPENTER
TSB-1 Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
3-18-14 [[16](#)]

CASE DISMISSED 3/24/14

Final Ruling: The case having previously been dismissed, the Objection to Confirmation of Plan by the Trustee 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 of Plan 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 denied as moot, the case having already been dismissed.

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, respondent creditor, and Office of the United States Trustee on March 14, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral 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 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4408 Iowa Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$95,600.00 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 first deed of trust secures a loan with a balance of approximately \$154,000.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$48,782.90. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The 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 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 Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 4408 Iowa Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$95,600.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on March 13, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to Debtor's 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).

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on Debtors' testimony at the First Meeting of Creditors held on March 6, 2014. Debtor's spouse has not joined in the petition. California Code of Civil Procedure §703.140(a)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

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

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

The Trustee has had not found any such waiver failed with the court after reviewing the docket.

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 Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained and Debtor is denied the \$150.00 exemption claimed for cash on hand; the \$300.00 in the BOA Checking Account #2266; \$6,500.00 in household goods and furnishings; \$420.00 in books and pictures; \$2,600.00 in wearing apparel; \$800.00 in furs and jewelry; and \$7,500.00 in a 1998 Toyota and "CHEW 2000," all claimed pursuant to Cal. Code Civ. P. § 703.140(b).

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 26, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e) (2) (A) (1).
2. Debtor may have 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). Debtor testified at the First Meeting of Creditors held on March 20, 2014, that he was not certain if all required federal tax returns had been filed for tax years 2009, 2010, 2011, and 2012.
3. The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a) (1) (B) (iv).

4. Debtor cannot make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6) based on his Chapter 13 documents being incomplete.
 - a. Schedule J lists Debtor's net income as \$1,120.00, where the plan payments are listed as \$100.00 per month.
 - b. Debtor has not used the new Official Form B 6I (Schedule I) and Official Form B 6J (Schedule J), which became the standard forms on December 1, 2013. Section 2.08 of Debtor's plan is incomplete.
 - c. The Debtor did not list the arrearage dividend and the amount of arrears owed to creditor ASC.
 - d. Debtor did not choose and check the appropriate box whether or not additional provisions are attached to the plan.
 - e. The value of Debtor's real property listed on Schedule A differs from the value listed on Schedule D. Schedule A values 6310 Wexford Circle, Citrus Heights at \$119,000.00, where Schedule D lists the value in the amount of \$158,500.00.
 - f. The plan payment is insufficient to fund the Class 1 ongoing mortgage payment and 5% Trustee compensation.
 - g. Debtor has claimed his interest in furs and jewelry having an aggregate value of \$1,100.00. Debtor has also claimed his interest in a 2008 Toyota Sienna, a salvaged Scion, and 2005 Toyota Camry with an aggregate value of \$14,300.00. Debtor lists these items as exempt under California Civil Code of Procedure § 703.140(b)(3). The exemption is limited to household furnishing, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, not furs, jewelry, and automobiles.
 - h. Schedule F was marked that Debtor has no creditors holding unsecured claims to report on Schedule F. It is not clear if Debtor completed Schedule F appropriately.
 - i. The Statement of Financial Affairs is incomplete. Debtor lists income in Question 1 as \$24,480.00 from Brothers Printing Inc. No timeframe is listed as to when this income was earned. Question #2 was marked as "none." Schedule I states that the Debtor receives \$820.00 per month from "roommates." Debtor provided no other information in the entire document.
5. The plan does not pay unsecured creditors what they would receive in the event of a Chapter 7. Debtor's non-exempt equity totals \$14,720.00 and the Debtor is proposing a 0% dividend to unsecured creditors. The Debtor is married and his spouse is not included in the bankruptcy. Debtor has not filed a spousal waiver for use of the California State Exemptions under California Civil Code of Procedure § 703.140. Trustee's Objection to Exemptions, NLE-2, is set for hearing on April 29, 2014.

Based on the foregoing, 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.

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*), the Chapter 13 Trustee, and the Office of the United States Trustee on March 27, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Deutsche Bank National Trust Company, as Trustee for GSAA Home Equity Trust 2006-13, Asset-Backed Certificates, Series 2006-131 ("Creditor"), is a secured creditor of the Debtor. Creditor opposes confirmation of the proposed Chapter 13 plan on the following grounds:

1. Creditor argues that the Plan does not meet the full value requirement as established by 11 U.S.C. § 1325(a)(5)(B)(ii). The amount of arrearage in Debtor's Chapter 13 Plan is incorrect. The Chapter 13 Plan does not provide for any pre-petition arrears. The actual pre-petition arrears equal \$62,082.67. Debtor will have to increase the payment through the Chapter 13 Plan to this Creditor to \$1,724.52 per month in order to cure Creditor's pre-petition arrears over a period of 36 months.

Creditor states that the pre-petition arrears currently due and owing consist of the following:

Description of Charge	Amount Owed
Missed Payments	\$56,396.16

Escrow Shortage	\$1,564.45
Late Charges	\$668.20
Assorted Fees	\$3,453.86

Debtor's Chapter 13 Plan misstates the ongoing monthly payment amount. Debtor's plan lists the payment in the amount of \$750.00. However, the actual monthly mortgage payment amount is \$1,134.84.

2. Debtor cannot cure the pre-petition arrears under 11 U.S.C. § 1322(d) within the term of the Plan. Debtor will have to increase the payment through the Chapter 13 Plan to this Creditor to approximately \$1,724.52 per month in order to cure Creditor's pre-petition arrears over a period of thirty-six months. Additionally, Debtor will have to increase his ongoing monthly payments to this Creditor by \$384.84 to pay the full ongoing post-petition monthly mortgage payment.

Based on the foregoing, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court is also sustaining the objection filed by the Chapter 13 Trustee, NLE-1, to confirmation of this plan. The instant objection is also 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.