UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 26, 2016 at 3:00 p.m.

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1. 16-20700-E-13 KECIA LAWSON
DPC-1 Pro Se
OBJECTION TO DISCHARGE BY DAVID P. CUSICK
3-22-16 [20]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (pro se), and Office of the United States Trustee on March 22, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on March 22, 2016. Dckt. 20.

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

The Debtor filed a Chapter 7 bankruptcy case on May 10, 2013. Case No. 13-26539. The Debtor received a discharge on August 23, 2013. Case No. 13-26539-D-7, Dckt. 30.

The instant case was filed under Chapter 13 on February 8, 2016.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on August 23, 2013, which is less than four-years preceding the date of the filing of the instant case. Case No. 13-26539-D-7, Dckt. 30. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-20700), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 16-20700, the case shall be closed without the entry of a discharge.

2. 16-22100-E-13 DAVID/DEANNA TIBBETT MOTION TO EXTEND AUTOMATIC STAY
SJS-3 Matthew DeCaminada 4-12-16 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on April 12, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

David and Deanna Tibbett ("Debtors") seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 15-28207-B-13J) was dismissed on March 10, 2016, after Debtor failed to confirm the plan and caused unreasonable delay to creditors. *See* Order, Bankr. E.D. Cal. No. 15-28207-B-13J, Dckt. 48, March 10, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

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

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Review of Motion

The court begins with the Motion, which must state with particularity the grounds upon which the requested relief is based, as well as the relief itself. Fed. R. Bankr. P. 9013. The motion is a separate pleading from the points and authorities (which provides the citations, quotations, arguments, conjecture, and speculation), each declaration, and the exhibits (which may be filed as one exhibit document). L.B.R. 9004 and Revised Guidelines For Preparation of Documents. Notwithstanding these Rules, Debtor's "Motion" is a "Mothorities," in which counsel has created a mash-up of the points and authorities with what may be a statement of grounds. There is little excuse for failing to comply with these rules. To the extent that counsel may argue that this is just a "simple" Mothorities so the court should ignore the rules, the does not provide such differential application of the rules based on an attorney's personal belief. If it is that simple, then it is even easier for the attorney to prepare a simple points and authorities.

From reading the "motion" portion of the Mothorities, the court distills the following grounds stated with particularity: FN.1.

a. Debtor had pending dismissed a prior bankruptcy case during the one-year period preceding the commencement of the current bankruptcy case.

b. This Motion has been filed within thirty-days of the commencement of this case. (Additionally, the court notes that this hearing is being conducted with in the requisite thirty-day period. 11 U.S.C. § 362(c)(3)(B).)

c. Debtor has filed all fo the Schedules, Statement of Financial Affairs, and Chapter 13 Plan, and is able to actively prosecute this case.

Motion, Dckt. 14. The "motion" portion of the "Mothorities" stops there and the next portion of the document consists of the "argument" by counsel, with that section titled "Argument." Presumably, this is the portion fo the pleadings which are Debtor's points and authorities, not the motion. If the court follows counsel's direction and were to rule on the above grounds, Debtor loses.

Hidden in the points and authorities may be the following additional grounds:

> d. Debtor's downfall in the prior case was caused, in part, by Debtor's "monthly income was not stable and could only be estimated through the majority of the pendency of the Former Case."
>
> e. Now, Debtor has "a much clearer picture of income and time schedules so they may properly propose a Chapter 13 Plan."
>
> f. Debtor now computes income and expenses, and believes that a plan can be successfully prosecuted in this case.

Id.

FN.1. In light of the significant prejudice to Debtor if the court failed to consider the present matter, the court -for this one motion- will try and determine the grounds relied upon by Debtor. Counsel should not rely of such relief from the rules in the future, even if application of the rules may cause prejudice to a client or the attorney.

Debtor does not address how or why the prior "unstable" income is now "stable," a key issue. In looking at Schedule I in this case, Co-Debtor lists employment, with one employer for 27 years, with monthly gross income of $5,556.00. Dckt. 1 at 33. Debtor states that he is unemployed, receiving $4,400.00 a month in disability benefits. *Id.*

In the prior bankruptcy case, Co-Debtor listed the same employment information, with the gross salary being slightly less, $5,397.00. 15-28207; Schedule I, Dckt. 1 at 25. Debtor lists gross employment income of $2,303.00, having a new job (3 months employment). *Id.* In the prior case, Debtor stated reasonable and necessary expenses of ($4,940.16). *Id. at* 28.

While Debtor does not state it as a grounds, the "income stability" issue may have been caused by an injury or health issue which has cause Debtor to be on disability, unable to work. However, nothing like that is alleged.

Debtor's Declaration offers little on why the "income instability" situation has changed. Debtor only states:

> "11. We are re-filing bankruptcy due to financial hardship. Our previous case was filed at a time when our income was fluctuating and it was uncertain how much income we would be receiving per month and for how long that income would

continue."

Declaration, Dckt. 16. It as if Debtor is activity hiding the actual information concerning the defaults and income issues from the court.

While the Motion is very thin on grounds (some would say inadequate) and the Declaration carefully avoids providing any testimony (if grounds had been alleged) as to the source of, and correction for, the alleged "income stability," it does appear that Debtor and counsel are otherwise attempting to actively prosecute this case. In addition to the initial necessary documents to commence the case, Debtor is prosecuting motions to value, has significant income, and otherwise appear to be good candidates for a good faith prosecution of a Chapter 13 case. The other motions filed in this case by Debtor appear to be consistent with what is required in Federal Rule of Bankruptcy Procedure 9013 and the Local Bankruptcy Rules, so the pleading shortcomings in this Motion may be an aberration.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

3. 15-25401-E-13 MICHAEL KYALWAZI MOTION TO MODIFY PLAN
MS-1 Mark Shmorgan 3-15-16 [32]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Michael Kyalwazi ("Debtor") filed the instant Motion to Modify the Plan on March 15, 2016. Dckt. 32.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 7, 2016. Dckt. 40. The Trustee states that he does not oppose the plan but that there may be an error in the recalculation of expenses. The Trustee states that the Debtor proposed to reduce his entertainment expense from $150.00 to $40.00 per month, a $110.00 decrease where the Debtor has a non-filing spouse and four adult children dependents.

The Debtor's supplemental Schedule J reflects that adjustment in entertainment but inaccurately calculates that total expense. The Trustee states that the total expenses should be $6,683.51, rather than the $6,703.51 listed. Dckt. 38.

The Trustee states that based on the method of funding the plan increase, a reduction of the entertainment expense, the Trustee does not oppose the Motion.

DEBTOR'S REPLY

The Debtor filed a reply on April 7, 2016. Dckt. 45. The Debtor states that the Trustee is correct and the proper reduction in entertainment should have been from $150.00 down to $60.00. Debtor states that he has now corrected the schedules.

DISCUSSION

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

The Trustee and the Debtor both agree that the expenses listed in the Debtor's first supplemental Schedule J were not accurate. The Debtor has since filed corrected Supplemental Schedule J on April 7, 2016. Dckt. 43. The court's review of the corrected schedules as well as the corrected expenses reveals that the proposed budget is feasible. The proposed plan provides for the eventual step up in plan payment based on the further reduction in expenses. Upon review, the plan is confirmable.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 15, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

4. 15-28301-E-13 RICHARD/PAULA CUMMINGS MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 3-8-16 [59]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 8, 2016. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

The Motion to Confirm the Amended Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 8, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming

the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. 16-20602-E-13 DPC-1 THOMAS/SHANNON SHUMATE Scott Hughes

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 3-23-16 [32]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 23, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The court's decision is to overrule the Objection.

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Plan relies on the Motions to Value Collateral of Bank of New York Mellon and Wollemi Acquisitions.

On April 6, 2016, the Trustee filed a withdrawal of the instant Objection, the court having granted the two Motions to Value. Dckt. 42.

The court granted the two Motions to Value on April 5, 2016, which rendered the Trustee's objection moot. The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled 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 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 3, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. 15-29403-E-13 DBJ-1 ROBERT BELLUOMINI Douglas Jacobs

MOTION TO VALUE COLLATERAL OF BANNER BANK 12-10-15 [10]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 137 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Banner Bank is granted, with the court determining that the value of the collateral securing the claim is $128,350.00.

The Motion to Value filed by Robert Belluomini ("Debtor") to value the secured claim of Banner Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 22670 Meadowlark Lane, Orland, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor claims he received an appraisal, but does not offer the declaration of a licensed real estate appraiser who opines to the value of the property. The court was not presented with credible evidence of the opinion of an expert witness - an appraiser - for Debtor.

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

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

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

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

OPPOSITION

Creditor has filed an opposition. Creditor claims that it's Second Deed of Trust is completely secured and should not be stripped off. Creditor offers the Declaration of Douglas Kuss, a licensed real estate appraiser with 12 years' experience, who opines that the value of the property is $150,000.00. Dckt. 45. This value is based on comparisons of other comparable properties in the area as well as an exterior inspection of the Property. Based on this

value, Creditor claims that their deed is completely secured.

Mr. Kuss, in his declaration, states that "based on the full scope of considerations, including the comparable values and market conditions" Mr. Kuss values the Property at $150,000.00 as of March 17, 2016. Dckt. 45.

DEBTOR'S REPLY

On April 19, 2016, the Debtor filed a reply to the Creditor's opposition. Dckt. 47. The Debtor provides the declaration of Minberly Higby, a licensed real estate broker. Dckt. 52. Ms. Higby states that her estimation of the current Property is $100,000.00.

Debtor offers no explanation as to why the testimony of his expert witness was not presented with the Motion. The value of the property is Debtor's burden to carry, not merely respond to when Creditor presents evidence of value.

In "reply," Debtor offers now the testimony of Ms. Higby, opining as to the property having a $100,000.00 value. While Ms. Higby provides a document titled "Market Analysis," it consists of data and charts of various properties, but provides little, if any, analysis of these various other properties and Debtor's Property. Other than dictating to the court that Ms. Higby states that the Property has a value of $100,000.00, it fails to provide for the court "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." Fed. R. Evid. 702.

Ms. Higby's declaration merely states it is her opinion that the Property is worth $100,000.00, "so judge, I've made the necessary finding for you, just write it down and move on." This is of little, if any, assistance to the court, as the actual finder of fact, in this Contested Matter.

The Debtor in the reply, repeats his opinion, as the owner, that the value of the Property is $90,000.00. The Debtor files as Exhibit A what purports to be an appraisal made by a Roger M. Gibson. Dckt. 51, Exhibit A. Unfortunately, Mr. Gibson has not been able, refuses, or no longer believes the valuation to be accurate and has not provide any testimony as an expert witness in this Contested Matter. This raises serious questions s to the current accuracy of this document.

DISCUSSION

The crux of the issue is the value of the collateral at the time of filing. The Debtor asserts that at the time of filing, the value of the Property, which the Debtor is based on Debtor's owner's opinion of value of $90,000.00 and Ms. Higby's direction to the court to value the Property at $100,000.00, and the appraisal provided by Creditor that the value of the Property is $150,000.00.

Merely because an appraiser provides the court with an Opinion and analysis to assist the court in properly valuing the Property, that does not mean the court blindly accept that opinion, any more than the court would blindly accept Ms. Higby's opinion.

Review of Authenticated Appraisal

The Property at issue identified in the Kuss Appraisal is located rural area of Orland, California. The real property is 5.13 acres with one manufacture home unit located on it. The manufactured home is 32 years old, which Mr. Kuss opines has an "effective age" of 25 years. It has no garage, with vehicles parked in the driveway.

The manufactured unit is 1,152 square feet in size, comprised on 6 total rooms, with three of them being bedrooms. The unit does have a covered porch and a wood deck (of indeterminate sizes).

For condition, the Kuss appraisal states that the unit is exhibits some deferred maintenance and physical depreciation due to normal wear and tear. The exterior is stated to be of average quality and condition for a manufactured home of its age.

No interior inspection was conducted, and Mr. Kuss makes the assumption that the interior is of the same average condition and maintenance as the exterior.

The Kuss appraisal provides seven comparables used by Mr. Kuss in forming an opinion as to value. A summary of the comparables, in pertinent part, is set forth in the following charts.

	Debtor's Property	**Comparable 1**	**Comparable 2**	**Comparable 3**
Sales/Listing Price		$150,000.0	$145,000.0	$165,000.0
Date of Sale		February 2016	January 2015	April 2015
Distance From Debtor's Property		9.61 Miles South	7.10 Miles North East	8.08 North
Price Per Structure Square Foot		$138.89	$125.87	$133.50
Location	Gravel Road	Near Highway	Residential	Gravel Road
Adjustment			($5,000)	
Real Property Size	5.33 acres	5.99 acres	2.40 acres	3.21 acres
Adjustment		($1,700)	$5,500	$3,800
View	Pastoral	Pastoral	Pastoral	Pastoral
Design	Manufactured	Manufacture	Manufacture	Manufactured

Quality of Construction	Average	Average	Average	Average
Age	32	27	37	22
Condition	Average	Average	Average	Average
Rooms	Total: 6	Total: 5	Total: 5	Total: 6
	Bed: 3	Bed: 3	Bed: 2	Bed: 3
	Bath: 2	Bath: 2	Bath: 2	Bath: 2
Adjustment		$0	$4,000	$0
Gross Living Area	1152 sq feet	1080 sq feet	1152 sq feet	1236 sq feet
Adjustment		$1,800	$0	($2,100)
Heating/Cooling	FA Unit	FA Unit	FA Unit	FA Unit
Garage/Carport	None	None	None	None
Adjustment				
Porch/Deck	Porch/Deck	Porch/Deck	Porch/Deck	Porch/Deck
Barns		Barns and Stalls		2 Old Barns
Adjustment		($5,000)		($5,000)
Other				
Other				
Net Adjustment		($4,900)	$4,500	($3,300)
Adjusted Sales Price of Comparable		$145,000	$149,000	$161,700

	Debtor's Property	**Comparable 4 REO Foreclosure**	**Comparable 5 REO Foreclosure**	**Comparable 6 Listing**
Sales/Listing Price		$167,000	$160,900	$159,000
Price Per Structure Square Foot		$112.69	$119.72	$127.40

Date of Sale		August 2015	December 2015	Listing
Distance From Debtor's Property		7.74 Miles South	7.87 Miles East	7.24 Miles North East
Location	Gravel Road	Residential	Residential	Residential
Adjustment		($5,000)	($5,000)	($5,000)
Real Property Size	5.13 Acres	4.19 Acres	10 Acres	3.11 Acres
Adjustment			($9,700)	$4,000
View	Pastoral	Pastoral	Pastoral/Water	Pastoral
Adjustment			($2,500)	
Design	Manufactured	Manufactured	Manufacture	Manufactured
Quality of Construction	Average	Average	Average	Average
Age	32 years	18 years	19 years	30 years
Condition	Average	Average	Less Than Average	Average
Adjustment			$10,000	
Rooms	Total: 6	Total: 7	Total: 6	Total: 5
	Bed: 3	Bed: 3	Bed: 3	Bed: 2
	Bath: 2	Bath: 2	Bath: 2	Bath: 2
Adjustment		$0		$4,000
Gross Living Area	1,152 Sq. Feet	1,482 Sq. Feet	1,344 Sq. Feet	1,248 Sq. Feet
Adjustment		($8,300)	($4,800)	($2,400)
Heating/Cooling	FA Unit	FA Unit	FA Unit	FA Unit
Garage/Carport	None	1- Carport	2-CDG	1-Carport
Adjustment		($2,000)	($8,000)	($2,000)
Porch/Deck	Porch/Deck	Porch/Deck	Porch/Deck	Porch/Deck
Other			Pond	
Adjustment			($2,500)	
Other				

Net Adjustment		($15,000)	($22,500)	($1,400)
Adjusted Sales Price of Comparable		$151,700	$138,400	$157,600

	Debtor's Property	**Comparable 7 Listing**
Sales/Listing Price		$138,000
Date of Sale		Listing
Distance From Debtor's Property		6.80 Miles North East
Price Per Structure Square Foot		$127.78
Location	Gravel Road	Gravel Road
Adjustment		
Real Property Size	5.13 Acres	1.50 Acres
Adjustment		$7,300
View	Pastoral	Pastoral
Adjustment		
Design	Manufactured	Manufactured
Quality of Construction	Average	Average
Age	32 years	18 years
Adjustment		$0
Condition	Average	Average
Adjustment		

Rooms	Total: 6	Total: 5
	Bed: 3	Bed: 3
	Bath: 2	Bath: 2
Adjustment		$0
Gross Living Area	1,152 Sq. Feet	1,080 Sq. Feet
Adjustment		$1,800
Heating/Cooling	FA Unit	FA Unit
Garage/Carport	None	1- CDG
Adjustment		($4,000)
Porch/Deck	Porch/Deck	Porch/Deck
Other		
Adjustment		
Other		
Net Adjustment		$5,000
Adjusted Sales Price of Comparable		$143,100

Mr. Kuss states that he finds comparables 1, 2 and 3 to be the nearest and most comparables for valuing this Property. Comparables 4 and 5 are REO real estate owned) foreclosure sales. In viewing the comparables most relief upon by Mr. Kuss, they appear to be clustered around the city of corning, and not a more remote location, closer to the freeway, as the Property at issue in this Contested Matter. Appraisal Report, Map on page 20 of Report; Dckt. 45.

In his first Declaration, Debtor testified relating to the value of the Property:

A. He believed the value was $90,000, which is approximately $10,000 less that the senior liens against the Property.

B. Debtor determined his opinion as to value based on reviewing local sales in the area and consulting with a local real estate broker.

C. Debtor says that he “paid” for an appraisal of the Property.

Declaration, Dckt. 12. While Debtor has stated his opinion as to value, and such is evidence, this first Declaration provides little of assistance to the court in determining the value in light of conflicting evidence.

After the court vacated Creditor's default and Creditor filed its evidence, Debtor responded with a supplemental Declaration. Dckt. 48. He repeats his earlier testimony. Debtor does not provide the court with any testimony of the condition of the Property or photographs.

In her Declaration, Kimberly Higby testifies that she believes the value of the Property is $100,000. Ms. Higby is a real estate broker (licensed in 2007) and prior to that has worked as a real estate agent since 2000. Ms. Higby's experience appears to show her specialized knowledge in the area of real estate valuation for her to present testimony as an expert. Fed. R. Evid. 701-703.

Ms Higby directs the court to a Comparative Market Analysis ("CMA") for the court to obtain additional information of value. Exhibit B, Dckt. 52. The first page of the CMA is Ms. Higby's cover letter. The following pages contain basic information concerning the Property including:

A. The manufacture home was built in 1984

B. The last sale was in October 2004, with a $150,000 purchase price paid by the Debtor.

C. The current assessed value is $102,271 ($46,187 for the land and $56,084 for the improvements).

D. The quality of the improvements are average.

E. The Estimated Value for "RealAVM is $160,498, with the value range being $123,583 - $197,413 as of April 8, 2016.

F. The comparables used by Ms. Higby range from 1,230 to 1,248 square fee and were built between 1983 and 2005, with the improvements being 11 to 33 years old.

G. Ms. Higby provides only two comparables, which may be because she has limited the square footage to homes with almost exactly the same square footage.

Unfortunately, the pictures on Mr. Kuss' Appraisal Report are of very poor quality and cannot provide the court with a good visual picture. (In this day and age of high quality digital pictures and imaging of pictures and documents, there is little excuse for evidence filed with the court to be of less than clear, high quality images.) Ms. Higby fails to provide the court with any pictures of the Property at issue.

Finally, respect to the unauthenticated appraisal report "paid for" by the Debtor, the court's review discloses the following. Exhibit A, Dckt. 51. The appraisal report was not prepared for the Debtor but a third-party lender, Wells Fargo Bank, N.A. Dckt. 51 at 2 (Lender/Client field).

In considering the evidence Mr. Kuss's Appraisal Report provides the

court with more credible specialized knowledge information concerning the Property. However, that is not the "end of the story." While more credible in providing information to the court, it is not a determinative opinion dictating a finding to the court.

Both Debtor and Creditor appear to suffer from "end resultitis." Debtor needs the property to be valued at $100,000 or less to try and modify the claim of creditor which appears to be secured only by Debtor's residence. 11 U.S.C. § 1322(b)(2). The Debtor's opinion and the opinion of Ms. Higby present a value just under that target number for Debtor.

On the other hand, Creditor asserts that is owed $34,838.88, and equally coincidently based on Creditor's expert's opinion of value, Creditor's claim is just slightly oversecured in this case. These almost exactly equal to the respective party's target scenarios casts doubt as to the credibility of either.

Determination of Value

The court determines value without regard to "who wins and who loses." In many respects, the determination by the court may be of little world impact for either party. For Creditor, it appears to be chasing a modest claim for which the collateral is encumber by a senior lien three times larger than Creditor's claim. If it were to foreclose on the collateral, advance the monies to pay the senior secured debt, insure and carry the property for nine to twelve months, pay to secure and clean up the Property, market the property, and then pay for the costs of sale, it is likely to net significant less than the apparent fully secured value stated by its appraiser's testimony.

Conversely, while the Debtor would not pay Creditor for a claim when the property does not provide Debtor with any upside value, not having to move does have some value to Debtor. For Debtor, if the Property has a value of $1.00 (theoretically) over the senior lien, then the secured claim of Creditor cannot be modified. Most likely, Debtor and his testifying expert witness believe that the Property has a gross value greater than $100,000.00.

Notwithstanding the economic realities of the Property, value, and claim, the Parties have not resolved this dispute.

Upon review of the evidence, the court determines that the Real Property and manufactured home improvements thereon has a value of $128,350.00. The court makes further adjustments for location; the age of the comparables; the condition of the comparables; the allocation of valuation to improvements and real property as stated by the assessor, and other condition and improvement factors.

RULING

The senior in priority first deed of trust secures a claim with a balance of approximately $101,129.24. Creditor's second deed of trust secures a claim with a balance of approximately $34,838.88. Therefore, Creditor's claim secured by a junior deed of trust is partially unsecured. Creditor's secured claim is determined to be in the amount of $27,220.76, and therefore payments in the secured amount of the claim 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.

Again, it is worth repeating, though the court's determination of value is in excess of Debtor's goal of $100,000 (that being necessary for a valuation and possible "lienstrip"), this process is for a large part economically illusory. If Creditor stubbornly pounds the table demanding $34,00o+ to be paid, Debtor may well grant Creditor its wish, leaving Creditor to foreclose, own the property, pay the senior lien, and gamble that somehow the Property may so increase in value that it is economically go from the lending business to real estate speculation.

Conversely, if Debtor is convinced that the property is worth less than $100,000 and digs his heels in, Creditor may well compute a better upside from closing than just taking nothing in the bankruptcy case. Creditor may give Debtor his wish, "freeing him" from having to pay the debt owed Creditor from Debtor's pocket, but Creditor resorting to its collateral.

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 Robert Belluomini ("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 court determines that the value of the real property commonly known as 22670 Meadowlark Lane, Orland, California ("The Property"), has a value of $128,350.00. For purposes of valuation of the secured claim of Banner Bank, for which The Property is the collateral, pursuant to 11 U.S.C. § 506(a), the secured claim is valued at $27,220.76, the collateral being encumbered by the senior lien securing the $101,129.24 claim of Wells Fargo Bank, N.A. The court makes no determination of the amount of Creditor's secured claim which must be paid through a Chapter 13 Plan (Creditor having asserted its rights under 11 U.S.C. § 1322(b)(2)).

7. 14-29505-E-13 JOHN/CAROLIN FUNDERBURG MOTION TO MODIFY PLAN
DJC-3 Diana Cavanaugh 3-15-16 [66]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 15, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

8. 12-21207-E-13 JIM LEDESMA
PGM-2 Peter Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
3-29-16 [141]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

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

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

The Motion for Allowance of Professional Fees is granted.

Peter Macaluso, the Attorney ("Applicant") for Jim Ledesma, the Chapter 13 Debtor ("Client"), makes a Substantial and Unanticipated Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period December 7, 2015 through March 22, 2016. Applicant requests fees in the amount of $2,820.00.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 1, 2016.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

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

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

Benefit to the Estate

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

opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including responding to Motion to Dismiss, prepare a modified plan, file Motion to Confirm Plan, address Trustee's objection to the proposed plan, attended hearing on Motion to Modify, and prepared order confirming. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

"No-Look" Fees

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

> "(a) Compensation. Compensation paid to attorneys for the representation of chapter 13 debtors shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority."
> ...
> (c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.
>
> (1) The maximum fee that may be charged is $4,000.00 in nonbusiness cases, and $6,000.00 in business cases.

> (2) The attorney for the chapter 13 debtor must file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys.
>
> (3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6)."

The Order Confirming the Chapter 13 Plan expressly provides that Applicant is allowed $4,000.00 in attorneys fees, the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Applicant prepared the order confirming the Plan.

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

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

FEES REQUESTED

Fees

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

Post Confirmation Attorney Services: Applicant spent 9.4 hours in this category. Applicant assisted Client with reviewing the Trustee's Motion to Dismiss, respond to the Motion, meet with Client to discuss plan modifications, prepare proposed plan and Motion to Modify Plan, attend hearing, and prepare order confirming.

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

Names of Professionals and Experience	**Time**	**Hourly Rate**	**Total Fees Computed Based on Time and Hourly Rate**
Peter Macaluso, Esq.	9.4	$300.00	$2,820.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
	0	$0.00	$0.00
Total Fees For Period of Application			$2,820.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The Applicant asserts that the additional post-confirmation work was actual, reasonable, necessary and unanticipated. Namely, the Applicant states that since Applicant substituted in as the Client's attorney of record, Applicant has had to respond with the Motion to Dismiss, prepare a proposed plan to rectify the Trustee's grounds for dismissal.

The court notes that in the Motion, the Applicant states inconsistent hours, rate, and dollar amount of fees. On Page 1 of the Motion Applicant states that he is requesting $750.00 in fees (which the court recognizes as a clearly unreasonably low amount in a case where counsel is not discounting his fees due to a client's inability to pay the full amount of otherwise reasonable

fees). On Page 2 of the Motion, the Applicant states that the work completed was "9.45 hours for which the applicant seeks $2,820.00." however, then in the Applicant's task billing, the concluding tally indicates that the rate per hour is "$200.00/hr" and a total of "9.40" hours. The court will construe the requests as 9.4 hours at a rate of $300.00 per hour for $2,820.00.

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Unanticipated and Substantial fees in the amount of $2,820.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

Fees $2,820.00

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), Attorney for the Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:
>
> Peter Macaluso, Professional Employed by Chapter 13 Debtor
>
> Fees in the amount of $2,820.00
>
> The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.
>
> **IT IS FURTHER ORDERED** that the Trustee under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

9. 15-29511-E-13 HOA NGUYEN — MOTION TO CONFIRM PLAN
MEV-1 Marc Voisenat — 3-15-16 [44]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

Hoa Thai Nguyen ("Debtor") filed the instant Motion to Confirm the Amended Plan on March 15, 2016. Dckt. 44.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 7, 2016. Dckt. 51. The Trustee opposes confirmation on the following grounds:

1. The Debtor's plan is not the Debtor's best efforts. The Debtor proposes to pay $4,016.16 for 36 months with a 100% dividend to general unsecured claims. The Debtor's projected disposable monthly income on Schedule J totals $15,603.00 and the Debtor is proposing a plan payment of only $4,016.16. If all disposable income is contributed toward the plan, Debtor's plan will complete in approximately 10 months as opposed to 36

months.

2. The plan may not be the Debtor's best efforts of the Debtor cannot make the plan payments. The Debtor provided an attachment showing a breakdown of business and rental expenses. Dckt. 19. However, the attachment does not provide the gross or rental income. The net business income listed on Schedule I is $22,897.00, however, the Trustee is not certain if this amount reflects rental income as well. The Debtor's 2014 income taxes show the following profit and loss for both auto parts retail and sales; $51,800.00 gross income for auto parts; $35,000.00 expenses; and $16,800.00 net profit; $48,600.00 gross income for sales; $29,500.00 expenses; and $19,100.00 for a combined profit of $35,900.00 for the year.

   The income listed on the Debtor's Statement of Financial Affairs, reflects the following gross income from January 1, 2015 through the date of filing the bankruptcy of $18,700.00 and $8,800.00 for a total of $27,500.00 through 2015. The last page of Form B22C reflects that the Debtor receives rental income of $800.00 and $1,700.00 per month. However, this income is not listed on Schedule I.

3. The Debtor's plan may not comply with the Code. The Debtor's plan proposes to pay 10.0% interest on arrears to Parkview West Homeowners Association, however, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.

4. The Debtor lists Bank of America in Class 4 of the Plan at $250.00 per month, however, this creditor is not listed on Schedule D and it appears that the creditor filed a Notice of Mortgage Payment Change on April 6, 2016 which indicates that the payment is $946.57 per month effective April 30, 2016.

5. Class 4 of the Debtor's Plan provides for Wells Fargo in the amount of $853.00 per month and Wells Fargo Bank in the amount of $2,300.00 per month, which indicates that the Debtor makes the payments, however, Schedule J reflects an expense of $3,952.00 for mortgages on other property, which is $799.00 more.

6. It appears that the Debtor cannot make the payment required because the Debtor's Schedule J does not reflect an expense for income taxes. The Debtor's attachment reflects an expense of $140.00 per month for insurance, however, the Debtor fails to indicate what property this is for.

DISCUSSION

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

The Trustee's objections are well-taken. The crux of the Trustee's

objection is essentially that the Debtor's plan does not appear to be proposed in good faith because there are numerous discrepancies between the plan and schedules. The real conflict arises due to the Debtor having multiple properties in which there are ongoing expenses but does not explicitly provide which expense is to which property nor do the expenses match up with what was reported on the Schedules.

For example, the Debtor lists in the Plan in Class 4 two claims from Wells Fargo for two different properties. The combination of the two outside the plan payments equates to only $3,153.00. However, on Schedule J, the Debtor reports mortgage expense in the amount of $3,952.00. There is clearly a discrepancy in the amount the Debtor budgets on Schedule J and what is proposed in the plan. To further highlight the conflicts, the Trustee also notes that the Bank of America claim listed in Class 4 only provides for $250.00 per month when Bank of America filed a Notice of Mortgage Payment Change that the payment is increasing to $946.57. Facially, the plan nor the Debtor's budget provides for that increase, making the plan not confirmable.

Additionally, the Debtor's income reported and the proposed plan raises concerns over whether the Debtor's plan is his best efforts. Between Schedule I, Statement of Financial Affairs and the Business Rental Expenses, the Debtor does not provide clearly explained income, whether the income listed is net or gross, or why between the three documents, the Debtor's income varies, with some rental property income not being listed on Schedule I but being reported on Form B22C. Without the Debtor providing competent, complete, and thorough financial records and properly filled out schedules, the court nor any other party in interest can determine if the plan is feasible or viable. When the Debtor's income appears to vary based on the rental property and the Debtor failing to provide the court with clearly articulated budgets, the plan cannot be confirmed.

As stated by the Trustee, Debtor could complete this Plan within 10 months, but is electing to spread it out over 36 months, thereby obtaining an "interest free loan" from creditors with general unsecured claims. Debtor is not providing creditors with the present value of their claims in light of Debtor not funding the plan will all of the projected disposable income. 11 U.S.C. § 1325(b).

Additionally, there appears to be expenses that the Debtor does not provided for in the Schedules, making it impossible for the court to determine if the plan is feasible, viable or complies with the Bankruptcy Code. As the Trustee highlighted, the Debtor fails to provide an expense for income tax. Additionally, the Debtor fails to properly report what the expense for insurance is for. These failures collectively makes the plan far too tentative and leaves the court to "fill in the blank" in areas where the plan is lacking. The court declines that invitation.

The Debtor also fails to provide grounds that would entitle the Class 1 claim of arrears 10% interest on the arrearages. Pursuant to 11 U.S.C. § 1322(e) the Creditor would not be entitled to interest unless the creditor was entitled to such under the note or other non-bankruptcy law. No such allegation has been presented by the Debtor.

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

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

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

10. 16-22214-E-13 LYDIA RAMIREZ — MOTION TO EXTEND AUTOMATIC STAY
SDB-1 Scott de Bie — 4-11-16 [8]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Chapter 13 Trustee, and Office of the United States Trustee on April 11, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Lydia Ramirez ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 13-28342) was dismissed on April 6, 2016, after Debtor voluntarily dismissed the case. *See* Order, Bankr. E.D. Cal. No. 13-28342-A-13J, Dckt. 48, April 6, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the

subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. The untimely death of her husband, and co-debtor in the former case, resulted in a lower amount of monthly income. Her husband died on January 26, 2014 and although she was able to keep up with the payments, eventually the loss of her husband's income made it impossible to keep up with payments. Debtor has put forth a 60 month plan that will allow her to afford the payments by increasing the duration and amounts of payments.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

11. 15-28525-E-13 CORNELL/BARBARA TINDALL — MOTION TO CONFIRM PLAN
NBL-1 Nicholas Lazzarini — 3-11-16 [28]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2016. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

Cornell and Barbara Tindall ("Debtor") filed the instant Motion to Confirm the Amended Plan on April 6, 2016. Dckt. 33.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 8, 2016. Dckt. 33. The Trustee opposes confirmation on the ground that the Debtor is $1,788.42 delinquent in plan payments.

DISCUSSION

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

The basis for the Trustee's objection is that the Debtor is $1,788.42 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

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

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

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

12. 16-20626-E-13 JOSEPH AXTELL
DPC-1 Richard Hall

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
3-23-16 [16]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on March 23, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

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

1. The Debtor failed to appear at the Meeting of Creditors.

2. The Debtor has failed to provide the Trustee with Business Documents including: Questionnaire, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance.

3. Th plan will not complete within 60 months based on the Proof of Claim filed by the Internal Revenue Service.

DEBTOR'S REPLY

Joseph Axtell ("Debtor") filed a reply on April 8, 2016. Dckt. 22. The Debtor states that the Debtor will appear at the continued Meeting of Creditors. The Debtor further states that the Debtor has submitted the missing business documents via email to the Trustee. Lastly, the Debtor states that he will amend the plan to properly account for the Internal Revenue Service claim.

DISCUSSION

The Trustee's objections are well-taken. While it appears that the Debtor may have provided the necessary documentation to the Trustee and states that he will appear at the continued Meeting of Creditors, the Debtor admits that a new plan will need to be proposed because of the Internal Revenue

Service claim.

The Amended Plan and motion to confirmed have been filed, with the hearing set on that motion for June 2016.

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

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

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

13. 16-20626-E-13 JOSEPH AXTELL
EAT-1 Richard Hall

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
3-22-16 [13]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 22, 2016. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection.

Wells Fargo Bank, N.A. ("Creditor") opposes confirmation of the Plan on the basis that the Plan does not provide for the correct amount of pre-petition arrearages owed and does not accurately state the on going monthly payment.

DEBTOR'S REPLY

Joseph Axtell ("Debtor") filed a reply on April 1, 2016. Dckt. 20. The Debtor admits that the correct arrearage amount should be $54,361.08 and that the ongoing monthly payment should be $2,620.81. The Debtor states that they will file a new proposed plan prior to the hearing.

DISCUSSION

The Creditor's objections are well-taken.

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

11 U.S.C. § 1322(b) specifies the provisions that a plan may include at the option of the debtor. With reference to secured claims, the debtor may

not modify a home loan but may modify other secured claims, 11 U.S.C. § 1322(b)(2), cure any default on a secured claim, including a home loan, 11 U.S.C. § 1322(b)(3), and maintain ongoing contract installment payments while curing a pre-petition default, 11 U.S.C. § 1322(b)(5).

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

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

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

Here, the plan does provide for the Creditor's claim but does not provide for the full amount of the pre-petition arrearages nor properly provide for the ongoing monthly payment. The Debtor concurs with this.

Debtor has filed an amended plan and motion to confirm, with the hearing set for June 2016.

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

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

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

14. 10-49028-E-13 ANGELICA MARQUEZ
PGM-1 Peter Macaluso

CONTINUED OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
2-8-16 [59]

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

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

Below is the court's tentative ruling.

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

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

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

The Objection to Notice of Mortgage Payment Change is sustained.

REVIEW OF OPPOSITION

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

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

The Debtor asserts that the Debtor has provided for and paid the

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

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

TRUSTEE'S RESPONSE

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

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

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

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

Dckt. 14, line 19.

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

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

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

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

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

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

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

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

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

NATIONSTAR MORTGAGE LLC RESPONSE

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

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

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

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

Dckt. 70, Exhibit A.

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

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

APRIL 5, 2016 HEARING

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

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

APRIL 26, 2016 HEARING

No supplemental papers were filed in connection with the instant Objection since the hearing was continued. The court rules on the Objection based upon the pleadings filed.

The Notice of Mortgage Payment Change is computed as of March 14, 2011, with the payment change effective April 1, 2011. Exhibit 1, Dckt. 61. The Notice states that there was a negative ($5,919.92) escrow balance as of March 14, 2011. It states that the on-going monthly payment is to be increased by $684.51, which would make the April 1, 2011 and thereafter post-petition regular monthly payment $2,761.51. (The Notice of Mortgage Payment Change makes reference to "see the next page for account details," but no copy of the next page is provided as part of the exhibit.)

The Proof of Claim filed states that the pre-petition arrearage was $45,334.67, which includes county taxes of $2,400.68 paid on October 4, 2010, by the creditor. Proof of Claim No. 5, filed March 7, 2011. Proof of Claim No. 6 was filed, which amended Proof of Claim No. 5. The arrearage amount was amended to a higher amount of $48,853.95. Proof of Claim No. 6. The arrearage amount includes homeowner's insurance in the amount of $1,437.00 stated to have been paid on March 11, 2010, $681.28 stated to have been paid on March 24, 2010, and $1,401.00 stated to have been paid on March 7, 2011. Proof of Claim No. 6.

Nationstar asserted in its initial response that nearly five years have passed since the Notice was given. Nationstar asserts that under the contract the lender could set up an escrow account for taxes and insurance. Finally, Nationstar asserts that Debtor has not provided evidence that taxes and insurance on the property were paid twice - each by Debtor and the Creditor.

The court continued the hearing to allow Nationstar to assert its complete opposition, including evidence to support its contention that the Creditor has paid insurance and taxes post-petition.

When Debtor replied to the initial response, Debtor concurred in continuing the hearing to allow Nationstar to fully oppose the Motion. Debtor asserts that the increased payment which was made by the Trustee for the asserted higher current monthly payment be allocated to the arrearage due on the loan being paid through the plan.

While Nationstar is correct that Debtor has not provide the court with a simple declaration and copies of checks showing that the post-petition insurance and property taxes have been paid by Debtor, Nationstar has not provided evidence that the post-petition insurance and property taxes have been paid by Debtor. Nationstar is also correct in arguing that merely attaching unauthenticated copies of a computer screen printout showing that post-petition property taxes were paid does not show who paid the property taxes.

It may be that no further response has been filed by Nationstar because it has documented that Creditor did not make the post-petition insurance and property tax payments, but instead has either been able to apply the money to the arrearage or has been "squirreling away" the money in a suspense account, just in case.

What the court does have before it is a confirmed plan which requires Debtor to make the post-petition insurance and real property tax payments. See Confirmed Plan ¶ 3.09, providing for the payment of the current monthly principal and interest payment through the Plan, and Schedule J (upon which the projected disposable income was computed) providing for Debtor to make the post-petition real property insurance and property tax payments. Dckts. 15 and 14, respectively. There is no contention that Debtors have defaulted on these required payments.

Therefore, the court sustains the Objection and determines that:

A. The amount of the post-petition monthly payment of principal and interest for the obligation upon which Proof of Claim No. 6 is based was and is continuing to be $2,077.00; and

B. The additional payments above that amount of $684.51 commencing with April 2011 and continuing thereafter shall be applied to the pre-petition arrearage due Creditor on the Proof of Claim No. 6 obligation.

The Trustee shall prepare, file, and serve on Debtor, Nationstar, and their respective counsel, a reconciliation of such payments, the corrected computation of the pre-petition arrearage balance, if any, and the over-payment if any to such Creditor.

Any request for attorneys' fees and costs shall be by a timely post-petition filing of a costs bill and motion for allowance of attorneys' fees.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Notice of Mortgage Payment Change filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and the amount of the post-petition monthly payment of principal and

interest for the obligation upon which Proof of Claim No. 5, as amended by Proof of Claim No. 6, is based, which claim and right to payment is asserted to be held by Nationstar Mortgage and an entity identified as MACN.102-020 (see Response to Objection, Dckt. 69) was as of the April 1, 2011 payment, and continues to be $2,077.00; notwithstanding the Notice of Mortgage Payment Change given by Bank of America, N.A. (Exhibit 2, Dckt. 61).

IT IS FURTHER ORDERED that the additional payments of $684.51 made by the Chapter 13 Trustee for the Class 1 Claim for Proof of Claim No. 5, as amended by Proof of Claim No. 6, is based commencing with April 2011 and continuing thereafter as long as paid by the Chapter 13 Trustee shall be applied to the pre-petition arrearage due Creditor on the Proof of Claim No. 6 obligation.

IT IS FURTHER ORDERED that on or before May 13, 2016, the Chapter 13 Trustee shall file a reconciliation of payments made for the obligation upon which Proof of Claim No. 5, as amended by Proof of Claim No. 6, is based as a Class 1 Claim under the Confirmed Chapter 13 Plan, allocating the $684.51 payment to the pre-petition arrearage and stating any remaining pre-petition arrearage or overpayment of the pre-petition arrearage.

15. 16-20832-E-13 JOHN/CYNTHIA COBB
APN-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY SANTANDER CONSUMER USA, INC.
3-8-16 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 8, 2016. By the court's calculation, 49 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Santander Consumer USA Inc. dba Chrysler Capital, opposes confirmation of the Plan on the basis that the plan attempts to improperly value the collateral of the Creditor because it was incurred less than 910 days prior. Also, the Creditor asserts that the Debtor has failed to provide proof of insurance.

DEBTOR'S REPLY

John and Cynthia Cobb ("Debtor") filed a reply to the instant Objection on April 11, 2016. Dckt. 22. The Debtor agrees that the lien was incurred less

than 910-days prior to the instant filing. The Debtor states that they will provide for the full amount of the Creditor's claim. The Debtor requests that the order confirming specify that the Creditor's claim is not subject to "cramdown" and provide that the plan payments will be $680.00 "per month for 60 months to provide all claims."

DISCUSSION

The Trustee's objections are well-taken.

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

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

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

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

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

Here, the Creditor's claim is provided for, but the Debtor is improperly attempting to value the secured claim of the Creditor when the lien was incurred less than 910-days prior. 11 U.S.C. § 1325(a)(9). In fact, the Debtor admits that the Creditor's full claim is not provided for.

Rather than not confirming the plan, the Debtor proposes that the order confirming correct the errors made by Debtor and Debtor's counsel. The Debtor is proposing to increase the plan payments to $680.00 from the $610.00 proposed in the plan.

However, the Debtor does not provide any evidence or testimony as to how the Debtor is proposing to come up with the $70.00 increase. The proposed plan provides for a 0% dividend to general unsecured creditors. How the Debtor now, after the Creditor filed the instant Objection, is able to increase plan payments by nearly $100.00 per month while still not proposing a dividend to

general unsecured creditors can raise serious concerns over whether the plan is the Debtor's best efforts.

The court has also considered whether even the $680.00 a month payments would be sufficient. Debtor proposes increasing the Plan payment by $70.00 when the payment on Creditor's claim by $151.21 a month - the increase from the current $87.00 a month in the Plan to the full amount of the claim amortized over sixty months of $238.21.

Plan Payment	$680.00
Debtor's Attorneys' Fees ($3,000/60 months)	($ 50.00)
Chapter 13 Trustee's Fees (Est. 7%)	($ 47.60)
Class 2 Secured Claim (Dodge Dart)	($334.66)
Class 2 Secured Claim (PT Cruiser)	($238.21)
	$ 10.13 surplus

Though not addressed by Debtor, the $70.00 increase will be just enough to fund a plan properly providing for objecting Creditor's claim. In reviewing Schedule J, it appears that Debtor could nip away at expenses to create the additional $70.00 a month for the plan payment – even with a family of five.

This presumes that Debtor would want to keep the PT Cruiser which is worth $4,300.00 by paying $12,622.85 for it, plus 5% interest on the total amount. If this vehicle is actually worth $4,300.00, then the effective interest rate for paying the value over sixty months is 63.5%. Given the high value of the vehicle placed on it by creditor, Debtor may want to let the Creditor take the vehicle and sell it at auction. Or Debtor may want to negotiate with Creditor for a claim better than the value, but not one that equates to a 63.5% interest rate. Or if the Debtor is over a barrel and must have the vehicle, swallow hard and choke down the treatment Debtor now proposes.

The Plan, as amended to increase the monthly payment to $680.00 does comply with 11 U.S.C. §§ 1322 and 1325(a). The 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 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 overruled, Debtor having stated amendments to the Plan (which shall be set out in the order confirming) to provide for payment of the Santander Consumer USA Inc. claim in full by increasing the monthly plan payment to $680.00, retroactively, from month 1 of the plan. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall

be lodged with the court.

16. 16-20734-E-13 EUGENE SPENCER — **OBJECTION TO CONFIRMATION OF PLAN BY DISARIE RANESSA SPENCER**
MAS-1 Mohammad Mokarram — **3-28-16 [26]**

Final Ruling: No appearance at the April 26, 2016 hearing is required.

The court having previously issued an order continuing the Objection to Confirmation to 3:00 p.m. on May 10, 2016 (Dckt. 40), **the matter is removed from the calendar.**

17. 16-20740-E-13 EMMA MCZEEK-TANKO
KLF-1 Thomas Amberg

OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK, USA, N.A. 3-3-16 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 3, 2016. By the court's calculation, 54 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

HSBC Bank, USA, National Association, as Trustee for Ace Securities Corp. Home Equity Loan Trust, Series 2005-AGI, Asset Backed Pass-Through Certificates ("Creditor"), opposes confirmation of the Plan on the basis that:

1. The plan fails to provide for the full amount of the Creditor's pre-petition arrearage of $3,454.17. The plan only provides for $2,400.00 in pre-petition arrears.

2. The plan does not provide for the full $807.07 in regular monthly mortgage payments. The plan only provides for $796.00.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Objection on March 3, 2016. Dckt. 18. The Debtor asserts that the Creditor has not provided evidence to support the assertions in the Objection nor has the Creditor filed a Proof of Claim. The Debtor does state that she does recognize that if the Creditor is correct, the Debtor will need to modify the plan. However, the Debtor reasserts that currently, though, there is no evidence to support the claims of the Creditor.

DISCUSSION

The Debtor is correct that the Creditor has failed to provide properly authenticated evidence to support the allegations made in the Objection. The Creditor also improperly combines the Objection with the exhibits in support thereof. Dckt. 18. See L.B.R. 9004-1 and Revised Guidelines for Preparation of Documents. In this single document, the Creditor attaches the Objection, the Deed of Trust, and an Adjustable Rate Rider. However, the Creditor does not provide the declaration authenticating or providing foundation for any of the exhibits.

The Creditor's objection is based upon the plan not providing for the full pre-petition arrears and for the full monthly payment. The Creditor, to date, has failed to file a Proof of Claim, which, pursuant to 11 U.S.C. § 502, is deemed allowed. Rather than filing a Proof of Claim to support the Objection, the Creditor filed the instant Objection and instructed the court that a Proof of Claim would be filed later. Unfortunately, this procedure has created a problem where the Creditor has not provided any properly authenticated evidence to support its objections.

Local Bankr. R. 9014-1(d)(7) requires that every pleading must "be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested."

While the Creditor has provided evidence, the evidence has not been properly admitted or authenticated pursuant to the Federal Rules of Evidence and Federal Rules of Civil Procedure. The court cannot sustain the objection. FN.1.

FN.1. The rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and an unprovided for arrearage exists, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

Creditor's objection is one that goes to feasibility, as it will be Creditor's proof of claim or order of the court determining the claim, not Debtor's schedules or plan, which controls as to the amount of the arrearage.

Debtor's plan projects having to pay a $2,400.00 arrearage. Plan ¶ 2.08(c); Dckt. 7. The Objection asserts that the arrearage is actually $1,453.17 – a different of $1,053.17. Spread over the sixty months of the Plan, that is $17.56 a month.

While neither Creditor nor Debtor provide an economic analysis of the Plan before the court, an overrule of the finances is as follows:

Monthly Plan Payment	$1,075.00
Debtor's Attorneys' Fees ($2,575.00/60 months)	($ 42.92)
CH 13 Trustee's Fees (Est. 7%)	($ 75.25)
Class 1 Secured Current	($ 796.00)
Class 1 Secured Arrearage ($2,400)	($ 75.00)
Class 7 General Unsecured ($1,386.00/60)	($ 23.10)
	$ 62.73 Surplus

It appears that the Plan has a surplus of $62.73 a month in funding. This would easily cover an additional $17.56 a month. It may well be that if, and when, Creditor files a proof of claim, the Plan would not need to be amended, but the Chapter 13 Trustee compute the arrearage payment as required by the Plan. Plan ¶ 2.04; Dckt. 7.

Therefore, the objection is overruled.

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

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

18. 11-20341-E-13 JLK-4 VICTOR/DEBI GARCIA James Keenan

MOTION FOR SUBSTITUTION OF JOINT-DEBTOR DUE TO HER DEATH 3-29-16 [75]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

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

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

The Motion to Substitute is granted.

Joint Debtor, Victor Michael Garcia, seeks an order approving the motion to substitute the Joint Debtor for the deceased Debtor, Debi Marie Garcia. This motion is being filed pursuant to Federal Rule Of Bankruptcy Procedure 1004.1.

The Debtor filed for relief under Chapter 13 on January 5, 2011. On June 11, 2014, the Debtor's Chapter 13 Plan was confirmed. Dckt. 75. On November 9, 2015, Debtor Debi Marie Garcia passed away. The Joint Debtor asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed on March 29, 2016. Dckt. 75. Joint Debtor is the husband of the deceased party and is the successor's heir and lawful representative. Joint Debtor states that he will continue to prosecute this case in a timely and reasonable manner.

David Cusick, the Chapter 13 Trustee, filed a non-opposition to the instant Motion on April 7, 2016.

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which

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

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and waiver of post-petition education requirement for entry of discharge.

Here, Debtor Victor Michael Garcia has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 75. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Victor Michael Garcia, as the husband of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Debi Marie Garcia. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Substitute After Death filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Victor Michael Garcia is substituted as the successor-in-interest to Debi Marie Garcia and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

19. 14-24643-E-13 LAQUETA MARTIN — MOTION TO MODIFY PLAN
SJD-3 Susan Dodds — 3-17-16 [93]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 17, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

20. 15-27943-E-13 JULIENE ALEXANDRE — MOTION TO MODIFY PLAN
SNM-4 Stephen Murphy — 3-17-16 [47]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2016. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

Juliene Alexandre ("Debtor") filed the instant Motion to Confirm the

Modified Plan on March 17, 2016. Dckt. 47.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 12, 2016. Dckt. 56. The Trustee objects on the following grounds:

1. There is no change of address on file. The Debtor is proposing to surrender the real property commonly known as 2548 Marquette Court. The last filed Schedule J reflects an expense of $1,367.63 for rental/home ownership. The Trustee states it is unknown as to where the Debtor is currently residing and whether the rental/home ownership expense remains the same.

2. The Trustee is uncertain if the proposed plan payments are being made using the funds that would otherwise be going to Citimortgage, Inc. The Debtor is proposing to surrender real property but has not provided the Debtor's current residence.

DISCUSSION

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

The Trustee's objections are well-taken and are largely the same as they were during the last proposed modified plan. Dckt. 43.

The court concurs that the Plan cannot be confirmed when the Debtor has not provided all accurate financial information. Under the proposed plan, the Debtor is proposing to surrender real property at where the Debtor has listed as her residence. However, the Debtor has not filed a change of address.

While at the last hearing, the court discussed with Debtor's counsel the concern over their being inaccurate rental/home ownership expenses, when the Debtor has not provided any supplemental documentation to indicate a change in address. On April 15, 2016, the Debtor filed supplemental Schedule J that are the expenses as of "5/01/2016." Dckt. 59. Of note, this is the same budget that is inappropriately attached to the Debtor's declaration. See Local Bankr. R. 9014-1(d). A review of the Debtor's declaration states that she is "not currently incurring a rent or home mortgage expense." Dckt. 49, ¶ 4. However, the Debtor does not state what her currently living situation is, how she is not incurring any rental or home ownership expenses, or how, if the Debtor no longer has property to upkeep, how the Debtor still lists a $200.00 expense for home maintenance. Dckt. 59. Without this information, it is impossible for the court nor any party in interest to determine the feasibility or viability of the plan.

As the Supreme Court directed in *Hamilton v. Lanning*, 560 U.S. 505 (2010), the bankruptcy court must use the reasonably projected changes in income and expenses in computing the projected disposable income that must be paid into a plan when a creditor or the Trustee raises such objection.

The problem for Debtor is that while it may be that a family member or friend is allowing Debtor to reside rent free, Debtor makes gross changes in expenses so as to generate the same Monthly Net Income on Supplemental Schedule

J. Dckt. 59. On Original Schedule J, while having a monthly mortgage payment of ($1,367.63), additional monthly mortgage payment of ($534.24), home maintenance expenses of ($200.00), electricity/heating expense of $250.00, water/sever/garbage expense of $150.00. Debtor stated under penalty of perjury that her Monthly Net Income was $170.00, after all of the stated necessary expenses. Dckt. 11 at 15-16. This was used by Debtor as her projected disposable income to fund a plan.

Now, on Supplemental Schedule J Debtor has no housing expense and has managed to increase her Monthly Net Income to $1,000.00 from $170.00. However, Debtor has shed ($2,351.87) of month housing expenses. These number do not add up.

This is accomplished by Debtor now listing having a monthly expense of $600.00 for moving expenses and "misc. household expenses." Over the life of the plan, these moving and miscellaneous expenses total $30,000.00 to the Debtor. These moving and miscellaneous expenses are in addition to $600.00 a month for food and housekeeping supplies, $200.00 for clothing and laundry, $200.00 for personal care products, and $318.65 for entertainment and recreation. FN.1.

FN.1. While the court has no problem with a reasonable amount for entertainment for a debtor and family during a bankruptcy case, this odd number appears to be one reverse engineered after the desired monthly payment is determined, so as to create the illusion that there is an actual good faith computation of expenses on Schedule J.

This Debtor is burdened by having $9,392.15 a month in gross income and no dependents. Thus, it may be that the Debtor does actually have more money to fund a plan and pay creditors in full over less than sixty months. As drafted, the plan appears to have been constructed to create a sixty month interest free loan from creditors holding general unsecured claims and minimize the financial inconvenience to Debtor in having to obtain the extraordinary relief available under the Bankruptcy Code.

As discussed last hearing, the court will not "rubber stamp" confirmation of plans when the Debtor appears to be holding back information – namely, in the instant case, the Debtor's current living situation. Without the Debtor being forthright and up-front about her current residential and financial reality, the court cannot confirm the plan.

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

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

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

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

21. 16-20743-E-13 ANNA PETERSON — **OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK**
DPC-1 Ronald Holland — **3-30-16 [33]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Kevin Thompson on March 30, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. It appears that the plan fails the Chapter 7 liquidation analysis. The Debtor admitted at the First Meeting of Creditors held on March 24, 2016 that she was the beneficiary of a death benefit that was not listed on Schedule B or exempted on

Schedule C. The Debtor states that she did not know the value of the death benefit. The plan is proposing a 0% dividend to unsecured creditors and paying $8,975.00 in priority unsecured debt.

2. The Trustee notes that if the Motion to Extend Stay sought by Debtor is denied, it may affect whether the plan is proposed in good faith or the actions of the Debtor in filing the petition were in good faith.

The Trustee's objections are well-taken.

On April 12, 2016, the court granted the Debtor's Motion to Extend the Automatic Stay. Dckt. 46. Therefore, the Trustee's second objection is overruled.

However, as to the Trustee's first objection, the Trustee opposes confirmation of the Plan on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor admitted at the Meeting of Creditors that she was the beneficiary of a death benefit that was not listed on Schedule B or C.

On April 21, 2016, Debtor filed an Amended Schedule B, in which she now lists acquiring an interest in a "401k Mass Mutual" with a value of $11,575.43, which is due her from someone who died. Schedule B, Question 32; Dckt. 46 at 5. On Amended Schedule C Debtor claims an exemption in this entire 401k asset using her wildcard exemption. *Id.* at 7.

This appears to have addressed the Trustee's current objection. If there are greater assets which have not been accounted for, the Trustee and Creditors may act accordingly.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled. 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 overruled and the proposed Chapter 13 Plan file don February 10, 2016 is confirmed. Counsel for the Debtor shall prepare and forward to the Chapter 13 Trustee a proposed order confirming the Plan, which upon approval by the Trustee shall be lodged with the court.

22. 16-20743-E-13 ANNA PETERSON **OBJECTION TO CONFIRMATION OF**
RWH-1 Ronald Holland **PLAN BY KEVIN THOMPSON**
3-31-16 [37]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 31, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

Kevin Thompson ("Creditor"), opposes confirmation of the Plan on the basis that the plan is not filed in good faith. The Creditor asserts that the Debtor has improperly claimed her employment since 2015. The Creditor also asserts that the Debtor falsely reports that expense of the Supervised Visits at $650.00 and does not incur that much per month. The Creditor also asserts that the Debtor inaccurately reports her gross income for the year 2015, in conflict with the alleged reporting to the Department of Child Support. Lastly, the Creditor asserts that the Debtor knowingly and purposefully incurred more debt prior to filing the instant bankruptcy.

Unfortunately, the Creditor does not provide any declaration or

testimony to authenticate the evidence in which the Creditor bases his opposition on. The crux of the Creditor's opposition is that the Debtor's plan and case were not filed in good faith and that the Debtor is inaccurately reporting income and expenses.

However, in order for the court to give value to the exhibits provided by the Creditor, the Creditor has to provide the evidentiary basis for the court to admit the exhibits. Without the Creditor providing properly authenticated exhibits, the court cannot give evidentiary weight.

However, the Trustee also filed an Objection to Confirmation for the same plan as the Creditor opposes. The court sustained that objection, and denied confirmation of the plan.

Therefore, because the Creditor did not properly authenticate the exhibits, the 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 the Chapter 13 Plan filed by the Kevin Thompson having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is overruled without prejudice.

23. 16-20849-E-13 ERIKA DAVIS
DPC-1 Peter Macaluso

OBJECTION TO DISCHARGE BY TRUSTEE DAVID P. CUSICK
3-22-16 [12]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 22, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on March 22, 2016. Dckt. 12.

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

The Debtor filed a Chapter 7 bankruptcy case on April 26, 2016. Case No. 12-28065. The Debtor received a discharge on August 13, 2012. Case No. 12-28065-D-7, Dckt. 20.

The instant case was filed under Chapter 13 on February 16, 2016.

The Debtor filed a reply to the instant Motion on April 11, 2016. Dckt. 19. The Debtor acknowledges that a discharge is not appropriate in the instant case and requests that the objection be sustained.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on August 13, 2012, which is less than four-years preceding the date of the filing of the instant case. .Case No. 12-28065-D-7, Dckt. 20. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-20849), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the David Cusick, the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 16-20849, the case shall be closed without the entry of a discharge.

24. 16-20252-E-13 LEONARD SCROGGINS
MWB-3 Mark Briden

CONTINUED MOTION TO VALUE COLLATERAL OF ROGER CAMANN 1993 TRUST
3-7-16 [24]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Motion to Value filed by Leonard Scroggins ("Debtor") to value the secured claim of The Roger Camann 1993 Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1113 Echo Road, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of $160,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The only address served for the 1993 Roger Camann Trust was a post

office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

APRIL 12, 2016 HEARING

At the hearing, the Debtor's counsel advised the court that the Creditor will file a statement of non-opposition. The court continued the hearing to 3:00 p.m. on April 26, 2016.

DISCUSSION

To date, neither the Creditor nor Debtor have filed supplemental papers in connection with the instant Motion. The court offered the Debtor the opportunity to properly serve and get a non-opposition from the Creditor after the Debtor failed to properly serve the Motion. The Debtor only used a P.O. Box address which is facially insufficient.

Therefore, because the Debtor only served the instant Motion on the Creditor at a P.O. Box and no supplemental papers have been filed, the Motion is denied without prejudice.

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

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

25. 15-24954-E-13 JESSICA BELLOSO — MOTION TO MODIFY PLAN
SJD-2 Susan Dodds — 3-18-16 [44]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 18, 2016. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

Jessica Belloso ("Debtor") filed a Motion to Confirm the Modified Plan on March 18, 2016. Dckt. 44.

TRUSTEE'S LIMITED OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 12, 2016. Dckt. 50. The Trustee asserts that the months paid in stated in the Debtor's proposed plan payments differ from the Trustee's records. In the additional provisions of the modified plan, the Debtor has listed the proposed plan payments as:

> As of February 25, 2016 the Debtor shall have paid into the plan $1,612.00. Beginning March 25, 2016 and for the remainder of the plan payment shall be $559.00.
>
> According to the Trustee's records, Debtor has paid in $1,072.00

through month 8, which is February 2016, where this case was filed on June 19, 2015 so the first payment was due on July 25, 2015.

The Trustee has no objection to proposed modified plan if the language is corrected in the order confirming.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's objection on April 18, 2016. Dckt. 53. The Debtor proposes to have the order confirming correct the error as follows:

> As of February 25, 2016 the Debtor shall have paid into the plan $1,072.00. Beginning March 25, 2016 and for the remainder of the plan the plan payment shall be $558.00.

DISCUSSION

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

The Trustee's objection is well-taken. A review of the plan shows that the Debtor erred in filing the plan and inaccurately stating the plan payments to date. The Trustee and the Debtor agreeing that this can be corrected in the order confirming, the court determines that the error was a mere scrivener's error that can be corrected in the order confirming.

Therefore, after the Debtor correcting the language of the plan in the order confirming and upon the court's own review of the plan, the modified Plan complies with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 18, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the language to state,
>
> > As of February 25, 2016 the Debtor shall have paid into the plan $1,072.00. Beginning March 25, 2016 and for the remainder of the plan the plan payment shall be $558.00.
>
> transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

26. 16-20361-E-13 DANIEL MASSEY
APN-1 Ashley Amerio

OBJECTION TO CONFIRMATION OF PLAN BY BMW FINANCIAL SERVICES, N.A., LLC
3-17-16 [17]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 17, 2016. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The court's decision is to sustain the Objection.

BMW Financial Services NA, LLC, service provider for Financial Services Vehicle Trust ("Creditor"), opposes confirmation of the Plan on the basis that:

1. The plan improperly classifies the Creditor as a secured claim, when the Creditor's claim is a lease agreement. The Debtor has also failed to assume or reject the lease.

On March 21, 2016, Debtor filed a new Amended Plan. The hearing on the Motion to Confirm the Amended Plan is scheduled for June 14, 2016. Motion and Notice, Dckts. 27 and 33.

The filing of an amended plan is a *de facto* withdrawal of the current plan to which the objection was filed.

In light of the Debtor filing an amended Chapter 13 plan and the original plan improperly classifying the Creditor's claim as a secured claim, the Objection is sustained.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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 filed on February 5, 2016 Chapter 13 Plan is not confirmed.

27. 16-20263-E-13 JUDY BROWN
DPC-1 Joseph Canning

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

The Trustee filed a "Notice of Withdrawal" on April 22, 2016, Dckt. 32, stating that the Objection to Confirmation was withdrawn. The court construes this "Notice" as an election to dismiss the Objection to Confirmation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Objection having been dismissed without prejudice, the matter is removed from the calendar.**

28. 16-20963-E-13 RALPH CALLENDER **OBJECTION TO DISCHARGE BY DAVID P. CUSICK**
DPC-1 Mikalah Liviakis **3-22-16 [13]**

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 22, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Objection to Discharge is sustained.

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on March 22, 2016. Dckt. 13.

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

The Debtor filed a Chapter 7 bankruptcy case on December 31, 2014. Case No. 14-32551. The Debtor received a discharge on May 18, 2015. Case No. 14-32551-B-7, Dckt. 34.

The instant case was filed under Chapter 13 on February 19, 2016.

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on May 18, 2015, which is less than four-years preceding the date of the filing of the

instant case. Case No. 14-32551-B-7, Dckt. 34. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-20963), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Discharge is sustained.
>
> **IT IS ORDERED** that, upon successful completion of the instant case, Case No. 16-20963, the case shall be closed without the entry of a discharge.

29. 12-25574-E-13 JASON/MARGARET KHAN
PGM-2 Peter Macaluso

MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR
3-21-16 [83]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2016. By the court's calculation, 40 days' notice was provided. 36 days' notice is required.

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

The Motion to Substitute is granted.

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

The Debtor filed for relief under Chapter 13 on March 22, 2012. On August 31, 2012, the Debtor's Chapter 13 Plan was confirmed. Dckt. 36. On September 1, 2015, Debtor Margaret Khan passed away. The Joint Debtor asserts that he is the lawful successor and representative of the Debtor.

Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor requests authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties. The Suggestion of Death was filed

on October 29, 2015. Dckt. 52. Joint Debtor is the husband of the deceased party and is the successor's heir and lawful representative.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 8, 2016. Dckt. 58. Before outlining the Trustee's objections, the Trustee states that the Debtor has continued to fail to show that continued administration of the case is in the best interest of the parties. Dckt. 79. The Trustee objects on the following grounds:

A. The Declaration filed in support of the current Motion has resolved the Trustee's prior concerns regarding the life insurance expenses in the amount of $28.46 listed on Schedule J.

B. The Debtor has failed to provide a declaration to substantiate the dramatic changes in Schedule I and J. The Debtor has failed to explain how he is able to spend on $10.00 a month for clothing and laundry, $0.00 for home maintenance (decreased from $250.00 a month), and only $100.00 on food (which averages $1.07 per meal in a 31 day month.

While four years ago, the Debtor originally scheduled children as dependents aged 23 and 16, and does not have them scheduled as dependents, the Debtor indicates on Schedule J that the "debtor's children have returned to care for father if needs are struggling." The Debtor has not declared if other individuals are living with him, and if so, how they are assisting him. The Debtor has not indicated any information regarding the condition of the house and whether any maintenance is needed. The Debtor has not indicated how they will be able to work full time and spend only $10.00 on clothing and laundry.

DEBTOR'S SUPPLEMENTAL SCHEDULES B AND C

On April 19, 2016, the Surviving Debtor filed supplemental Schedule B and C. The added information on Schedule B and C are two interests in insurance polices:

Asset	Value	Exemption	Exemption Amount
TERM LIFE INSURANCE; as deducted on schedule J expenses: this is for surviving debtor ONLY, the deceased debtor did not qualify for term insurance due to pre-existing conditions.	$225.00	California Code of Civil Procedure § 703.140(b)(8)	$225.00

TERM LIFE INSURANCE; ReliaStar Life Insurance Company; Term Policy - unknown to the debtor prior to receipt	$1,002.35	California Code of Civil Procedure § 703.140(b)(8)	$1,002.35

SUPPLEMENTAL SCHEDULE I AND J

On January 29, 2016, the Debtor filed Supplemental Schedule I and J. Dckt. 75. The following chart provides the amendments to the schedules:

Schedule I	**May 1, 2012**	**January 29, 2016**	**Difference**
Employment:	Grade Setter at Top Grade Construction (8 months)	Labor at Kdw Construction (2 years and 8 months)	
Gross Wages	$6,988.28	$3,917.33	<$3,070.95>
Payroll Deductions	$1,686.79	$1,089.92	<$596.87>
Monthly Income (including deceased spouse)	$6,717.74	$2,827.14	<$3,890.60>

Schedule J	**May 1, 2012**	**January 29, 2016**	**Difference**
Rent/Mortgage	$1,312.26	$1,305.69	<$6.57>
Electricity, heat, natural gas	$250.00	$280.00	$30.00
Water and sewer	$82.00	$83.26	$1.36
Telephone, cable, cell phone, internet	$395.00	$152.00	<$243.00>
Pest Control	$26.00	$0.00	<$26.00>
Clothing, Laundry, Dry Cleaning	$260.00	$10.00	<$250.00>
Transportation	$550.00	$125.00	<$425.00>
Recreation, clubs, and entertainment	$0.00	$8.00	$8.00
Insurance	$173.46	$173.46	$0.00

Tax	Tax Withholdings for 1099 - $200.00	Vehicle Reg - $125.00	<$175.00>
Time Share Installment	$178.68	$0.00	<$178.68>
Maintenance	$48.46	$0.00	<$48.46>
Registration	$52.88	$0.00	<$52.88>
Food	$1,075.00	$100.00	<$975.00>
Home Maintenance	$250.00	$0.00	<$250.00>
Medical and Dental	$350.00	$6.00	<$344.00>
Personal Care	$210.00	$0.00	<$210.00>
Pet Food and Expenses	$130.00	$0.00	<$130.00>
TOTAL	**$6,173.74**	**$2,283.41**	**<$3,890.33>**

DISCUSSION

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

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

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

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period

following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

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

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

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

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. Local Bankr. R. 1016-1 permits a movant, in a single motion, to request for the substitution for a representative, the authority to continue the administration of a case, and

waiver of post-petition education requirement for entry of discharge.

Here, the court shares the concerns of the Trustee over the continued feasibility and administration of the case remains.

Supplemental Schedules

Debtor does not provide any declaration to substantiate the dramatic changes in Schedules I and J, especially in light of there being three years between the updated information. As discussed *supra*, the Debtor's Schedules I and J appear dramatically different, with numerous expenses either being dramatically reduced or eliminated. While it is clear this is due to the death of the deceased Debtor and also the fact Debtor's family moved out of the house, the Debtor has still failed to provide a declaration or testimony substantiating this changes.

The Declaration filed by the Surviving Debtor merely states the following:

> I, Jason K. Khan, Successor of Decedent/Debtor in the above instant action, do hereby declare as follows:
>
> 1. My wife did not have insurance a she had pre-existing conditions, and the insurance deducted on my expenses is for my term insurance only.

Dckt. 86.

The instant Motion has been continued twice already to afford the Debtor the opportunity to provide sufficient information. The Debtor has failed to provide such information to date. This Motion was filed on October 29, 2015. The time for the Debtor to supplement the instant Motion has come and gone.

Some of the glaring holes in the financial information include: (1) Debtor spending only $10 a month over two years for clothing and laundry; (2) Debtor spending only $0.00 for home maintenance (decreased from a necessary $250.00 a month); (3) Debtor spending only $100.00 a month on food (decreased from $1,075.00 for two persons), which for a 31 day month is only $1.07 per meal; and (4) $0.00 for personal care (decreased from $210.00 for two persons).

This is the Surviving Debtor's second attempt at filing the instant Motion. Dckt. 52. The Surviving Debtor faced nearly identical issues in the prior Motion, failing to provide sufficient testimony to justify the change in expenses and to provide evidence that the continued administration of the estate is in the best interest of the parties. Rather, the Surviving Debtor merely attempted to file the bare minimum and have the court rubber stamp the Motion. The court offered the Surviving Debtor the opportunity to file supplemental Schedules and declaration to explain and elaborate on the court's and Trustee's concerns. As discussed in the court's civil minutes at the previous hearing, the Surviving Debtor and Surviving Debtor's counsel's complete failure to provide sufficient evidence for the relief requested, the court specifically stated:

> Therefore, the Motion is denied without prejudice. The surviving Debtor and his counsel can go back, put together

> supporting evidence to explain Debtor's current financial situation, and show the court how the Debtor can perform the plan or will move to modify the plan. The court declines the opportunity to grant part of the Motion and designate the surviving Debtor as the personal representative in light of the gross failure to provide any explanation for $100 a month food expense, no home maintenance, and a disappearing personal care expense. Debtor's statements on the Supplemental Schedules may well demonstrate an inability to sufficiently understand his finances or serve as the personal representative for the deceased Debtor's interests.

Dckt. 69.

Since that time, it has been brought to the court's attention that Mr. Macaluso, the Surviving Debtor's counsel, had a medical emergency during the month of April. Counsel has appeared before this court for many years, representing both debtors and creditors. Counsel is well-aware of the court's uniform application of the rules, requiring that the parties state with particularity in the motion the grounds for which the relief is sought.

However, since Counsel substituted in as Attorney of Record for over 850 cases from Mr. Hughes' office, the court has noticed and noted to counsel the decline in the level of work-product submitted by counsel. The court, on a number of occasions, stated its concerns over counsel increasing his caseload to such a degree that his work-product would suffer. The court was reassured, on multiple occasions, by Counsel that no such decline has happened. Unfortunately, the court's premonition has come to fruition and Counsel's otherwise proper pleadings have suffered immensely.

While the court does continue to have the same concerns over whether the continue administration under a plan is possible, the concerns of both the court and the Trustee are ones that are more appropriate in terms of plan confirmation rather than substitution as a personal representative. Whether the Surviving Debtor can continue and complete a plan in the bankruptcy case when the Surviving Debtor has filed a proposed budget that does not seem viable is more of a fight to be had in plan confirmation rather than continued administration.

Here, by the skin of his teeth, Jason K. Khan has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the debtor. The Motion was filed within the 90 day period specified in Federal Rule of Bankruptcy Procedure 1016, following the filing of the Suggestion of Death. Dckt. 83. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that Joint Debtor, Jason K. Khan, as the husband of the deceased party and is the successor's heir and lawful representative may continue to administer the case on behalf of the deceased debtor, Margaret Khan. The court grants the Motion to Substitute Party.

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

> Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion is granted and Jason K. Khan is substituted as the successor-in-interest to Margaret Khan and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the requested waiver of 11 U.S.C. § 1328 Certification provided for the deceased Debtor Margaret Khan is granted.

30. 15-27785-E-13 LATANYA MOORE **MOTION TO CONFIRM PLAN**
PGM-1 Peter Macaluso **3-4-16 [56]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 4, 2016. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

Latanya Moore ("Debtor") filed the instant Motion to Confirm the Amended Plan on March 4 2016. Dckt. 56.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 8, 2016. Dckt. 66. The Trustee opposes confirmation on the following grounds:

1. Debtor has only made one payment in the first five months of the plan. The Trustee notes that this is the Debtor's second recent case with the prior case being dismissed for delinquency. Case No. 14-27870.

2. Debtor's amended Schedule I indicates that Debtor is employed. However, the occupation, employer's name and address and length of employment have been left blank. The gross monthly wages

have also been left blank. In "Other Monthly Income," Debtor lists "new job with elk grove unified school district, $2,688.00." There Is no indication if this amount is in the gross or net. Also, the Debtor has omitted the contributions from Family and Daughter at $310.00 per month that were previously listed on Debtor's Schedule I.

3. The Trustee has not received any pay advices from Debtor's new employment with Elk Grove Unified School District to date.

CREDITOR'S OPPOSITION

Capital One Auto Finance, a division of Capital One, N.A. ("Creditor") filed an opposition to the instant Motion on April 12, 2016. Dckt. 69. The Creditor objects on the following grounds:

1. The plan does not indicate that the Creditor has a Purchase Money Security Interest that was purchased less than 910-days prior to the filing of the petition.

2. The plan does not provide for adequate protection payments for pre-confirmation payments.

3. The $555.00 post-confirmation monthly adequate protection payments offered does not adequately protect the depreciation of the security.

4. The interest rate proposed is not sufficient.

DISCUSSION

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

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

The basis for the Trustee's first objection is that the Debtor is $1,265.00 delinquent in plan payments, which represents multiple months of the plan payment. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The Trustee's second objection concerns whether the Debtor has properly reported and disclosed all income. The Debtor indicates on Schedule I that the Debtor is currently employed. However, notably missing is the basic information as to the employer, location, length of employment. Dckt. 61. The Debtor then indicates that she has a new job with the school district. The Debtor does not provide any information as to the frequency of pay, whether the amount is net or gross, what deductions are being taken, etc. This is basic financial information that the Trustee, the court, and other parties in interest need in order to determine whether the plan, as presented, is feasible. Without the Debtor accurately reporting the Debtor's income, the objection is sustained.

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). Debtor has failed to provide all necessary pay

stubs. This is an independent ground to deny confirmation. 11 U.S.C. § 1325(a)(1).

As to the Creditor's objection, a review of the plan does show that the Debtor indicates that the claim of the Creditor is not a purchase money security interest. A review of the Proof of Claim and the accompanying documents shows that the Creditor's claim is secured by a motor vehicle that was incurred less than 910-days prior to the filing of the instant case. As such, pursuant to the hanging paragraph of 11 U.S.C. § 1325(a)(9), the value of the Creditor's claim can not be reduced. The Creditor is correct that the Debtor's plan does not accurately reflect that.

However, as to the Creditor's other objections, the court does not fully comprehend the Creditor's objections. The Creditor appears to be objecting to the proposed monthly rate and the interest rate. A review of Proof of Claim No. 2, the Creditor indicates that the annual interest rate is fixed at 4.25% and that the amount of the secured claim is $27,884.88. The Proof of Claim does indicate that there is a pre-petition arrearage amount of $82.05.

The plan provides for the Creditor's claim in Class 2. The amount of the claim is for the full amount alleged in the Proof of Claim and matches the interest rate of 4.5%. The court is unsure on what basis the Creditor is now asserting that the interest rate should be nearly quadrupled nor is the court certain as to how the plan does not provide for the Creditor's claim.

However, in light of the Trustee's objections and the plan's failure to properly identify the Creditor as holding a purchase money security interest, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

31. 16-22093-E-13 RONALD RICHARDS MOTION TO EXTEND AUTOMATIC STAY
SDH-1 Scott Hughes 4-8-16 [11]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Creditors, Chapter 13 Trustee, and Office of the United States Trustee on April 8, 2016. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted.

Ronald Richards ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 14-20285) was dismissed on January 27, 2016, after Debtor failed to make plan payments. *See* Order, Bankr. E.D. Cal. No. 14-20285-C-13C, Dckt. 38, January 27, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor

failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Debtor claims he lost rental income and could not keep up with the plan payments because a tenant that was paying rent "suddenly moved out." Debtor claims he now has "steady rental income" from two tenants and is also receiving help paying other bills from his girlfriend and mother.

TRUSTEE'S OPPOSITION

Trustee's Opposition to this instant motion was filed by David Cusick, Chapter 13 Trustee, on April 11, 2016. Trustee notes a number of issues regarding Debtor's current case. Debtor is still unemployed and looking for a job and Trustee notes Debtor's only income is from rent. Schedule I of the current plan reflects $1,350.00 net income from rental income, but Debtor's declaration only reports $700.00 monthly rental income. Debtor also claims his mother and girlfriend will help him pay but Trustee notes no declarations have been filed by the girlfriend, mother, or renters in support of the debtor. Debtor claims the previous case was dismissed when Debtor's uncle unexpectedly moved out. Trustee notes this same uncle is currently one of the tenants Debtor is relying on. Also, Debtor's monthly payment in the previous case was $774.25 while Debtor is proposing to pay $1,043.00 in the current case. Trustee notes that Debtor no longer has a vehicle and that Debtor appears less likely to be able to afford the plan payments in the current case than the prior case.

DEBTOR'S REPLY

Debtor filed Debtor's Response to Trustee's Opposition on April 12, 2016, Dckt. 20, responding as follows:

1. I, Scott D. Hughes, declare:

2. I am the attorney of record for the debtor.

3. Attached to this declaration as Exhibit "A" are copies of rental agreements showing the rental income the debtor is receiving and a statement from his girlfriend Crystal Cole, that she is contributing income towards plan payments.

4. Although the debtor no longer has a car, I am informed and believe that he does have the ability to take public transportation and he does have friends and family to help him get around.

5. The payments are higher in this case because the debtor has included delinquent property taxes that need to be paid. I am informed and believe that the debtor's mother will be contributing funds to help pay the property taxes because she owns half of the property.

6. Based on the foregoing, I would ask that the court grant the motion to extend the stay or continue it to give debtor's counsel time to obtain declarations from the tenants regarding rental income and the debtor's mother regarding the property taxes and an update on the debtor's job search.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DISCUSSION

The Debtor claims a change in circumstances will enable him to make plan payments in this instant case. However, it does not appear to the court that Debtor has had a change in circumstances. As was in the prior plan, the likelihood of the current plan succeeding is wholly dependant on the contributions of third parties. The Trustee's opposition as to feasibility is well taken. As admitted by the Debtor, he does not have the ability to fund this plan without relying on third parties.

In the former case, Debtor was unemployed and reliant on rental income to make plan payments; that plan failed when his tenant moved out. Here now, Debtor is unemployed and reliant on rental income to make plan payments. The court makes note that Debtor claims the previous plan failed due to his uncle "suddenly moving out," leaving him without rental income, but in this present case, Debtor is now presenting that same uncle as a reliable source of rental income. The Debtor has failed to show any legitimate change in circumstances that would make this plan more feasible. Although, in the present case, Debtor claims to have a second tenant. Debtor states, in his declaration, the combined rental income of the two tenants is $700.00, but fails to provide authenticated evidence to substantiate his claim. Instead, Debtor presents unauthenticated evidence in the form of a handwritten agreement and two lease agreements.

Additionally, there seems to be a discrepancy between the amount of income Debtor claims he receives each month and the amount actually received. Schedule I of Debtor's plan claims $1,350.00 per month in rental income, but in his declaration, Debtor claims he only receives $700.00 from two tenants and does not provide the source of the remaining $650.00 in claimed rental income.

Debtor claims he will receive financial help from his mother and girlfriend but how much and to what extent is indeterminable. Debtor has not provided any evidence to support or clarify these claims.

Even if the Debtor's mother or girlfriend were to submit a declaration that she believes that she can assist the Debtor make the plan payments, a third-party statement is not evidence that the Debtor can make the payments. If Debtor is to rely on the support of a third party, the financial information

of the third party is required to substantiate that assistance is feasible along with a declaration from that third party that denotes the amount they will be contributing.

Debtor has provided unauthenticated evidence that shows he receives $700.00 per month in rental income from two tenants. Debtor also provided an unauthenticated handwritten note that claims he will receive an unknown amount of money for groceries and utilities from his girlfriend. Debtor's income falls short of the proposed plan payment of $1,043.00 and it appears Debtor will be less likely to be able to afford the plan payments in the current case than the prior case.

Under the totality of the circumstances, Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

WITHDRAWAL OF OPPOSITION BY TRUSTEE

On April 20, 2016, the Chapter 13 Trustee filed a Response, stating that Debtor has provided the Trustee with a declaration from his mother stating that she will help with the plan payments and make the property tax and utility payments directly. Further, the Trustee has received a handwritten statement from Ms. Cole concerning payment of utility bills and groceries. Response, Dckt. 23. While not given to the court, it appears that the Trustee has been provided with information that has resolved his concerns. The statements from Debtor's Mother are consistent with the partial ownership interest she has in the property.

While not perfect, the Trustee's withdrawal of his opposition fills in the gaps left by Debtor not providing such evidence to the court. This rebuts the presumption of bad faith.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted and the automatic stay arising pursuant to 11 U.S.C. § 362(a) and § 1301 is extended in this case for all purposes and parties, until terminated by operation of law or further order of this court

32. 13-30194-E-13 SUSAN ZAVALA **MOTION TO DISMISS CASE**
CDR-1 Eric Schwab **3-2-16 [53]**

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

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

Below is the court's tentative ruling.

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

Correct Notice NOT Provided - Defect Cured. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, but not on the Debtor, on March 2, 2016. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

Debtor has filed a response to the Motion, curing the defect

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

The Motion to Dismiss the Case is granted and the case is dismissed, with the balance of the Motion denied.

This Motion to Dismiss the Chapter 13 bankruptcy case of Susan Zavala ("Debtor") has been filed by California Franchise Tax Board ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

1. The Debtor has violated the terms of her confirmed Plan by failing to pay her post-petition state tax liabilities. Debtor has failed to timely pay her taxes for the 2013 and 2014 tax years in violation of California law.

The Franchise Tax Board also requests that the court impose a one year bar on subsequent bankruptcy filings by Debtor. The Franchise Tax Board asserts that the Debtor has established a pattern of failing to timely pay taxes both inside and outside of bankruptcy. The Debtor has not paid her California taxes to Franchise Tax Board in a timely manner since at least the 2011 tax year and has filed two Chapter 13 cases in less than three years.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on April 4, 2016. Dckt. 58. The Trustee states that the Debtor is current under the confirmed plan in payments to be made to the Trustee.

The Franchise Tax Board is included in the plan for pre-petition taxes as a scheduled Class 5 creditor in the amount of $20,146.40. The Franchise Tax Board filed Proof of Claim No. 8 on October 18, 2013 claiming $20,146.40 as priority and $1,892.13 as general unsecured for 2011 and 2012 taxes, penalty, and interest. The Trustee has disbursed $12,451.00 to the priority claim.

The Trustee notes that the Debtor may file their 2015 tax return by the April 26, 2016 hearing, and the Trustee has no idea as to what the expected tax obligation is for 2015 and as to how much has been paid. In the event that the Debtor opposes the relief requested, the Trustee asks that the Debtor provide the Trustee with copies of their 2013 and 2014 state and federal tax returns with all schedules and statements attached.

The Debtor has a total of $26,798.60 of scheduled or filed unsecured claims that would eventually be paid under the plan, but where the Debtor is not paying their ongoing taxes the Trustee has no basis to oppose the Franchise Tax Board's motion.

DEBTOR'S RESPONSE

The Debtor filed a response on April 5, 2016. Dckt. 62. The Debtor states that she has no basis to oppose the motion.

TRUSTEE'S SUPPLEMENTAL RESPONSE

The Trustee filed a supplemental response on April 6, 2016. Dckt. 65. The Trustee states that he is uncertain if proper service of documents was given. The Trustee asserts that the service does not comply with Local Bankr. R. 7005-1(d)(3) as the proof of service does not contain the email addresses to which the documents were transmitted and it states that participants in the case will be served by the eCal WebFiling System.

The Trustee notes that the Debtor was not served but the Debtor has filed a response indicating the Debtor has no basis to oppose the Motion.

The Trustee states that he is filing the instant supplement to alert the Franchise Tax Board and the court as to future matters so no service issue will exist in future matters.

APPLICABLE LAW

Dismissal

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Injunctive Relief

Federal Rule of Bankruptcy Procedure 7001(7) requires that injunctive relief be obtained through an adversary proceedings. This provides the parties with all of the normal litigation protections and procedure, including Federal Rule of Civil Procedure 65, which is incorporated into Federal Rule of Bankruptcy Procedure 7065. As stated in 2 Collier on Bankruptcy, 16th Edition, ¶ 105.03[4], "Courts have been near universal in reversing injunctions which have been issued without compliance with Rule 7001." *State Bank of S. Utah v. Glenhill (In re Glenhill)*, 76 F.3d 1070, 1080 (10th Cir. 1996); *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995); *Wedgewood Inv. Fund, Ltd. v. Wedgewood Realty Group, Ltd (In re Wedgewood Realty Group, Ltd.)*, 878 F.2d 693, 701 (3rd Cir. 1989); *In re Martin*, 268 B.R. 168 (Bkcy. E.D. Ark. 2001), affd 271 B.R. 333 (B.A.P. 8th Cir. 2002); *Ramirez v. Whelan (In re Ramirez)*, 188 B.R. 413, 416 (B.A.P. 9th Cir. 1995) (Klein, J, concurring); *Tighe v. Mora (In re Nieves)*, 290 B.R. 370 (Bkcy C.D. Cal. 2003).

Federal Rule of Civil Procedure 65 and Federal Rule of Bankruptcy Procedure 7065 governs the granting of injunctive relief in Adversary Proceedings.

DISCUSSION

First, to address the Trustee's supplemental response concerning service, Local Bankruptcy Rule 7005-1(d) provides the following:

(d) Method of Service.

(1) Upon Those Parties Consenting to Service by Electronic

> Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first text line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.
>
> (2) Upon All Other Parties. Service on parties who are not registered users of the Court's electronic filing system or who are registered users but have opted out as provided for in Subpart (b) above must be made in the conventional manner as provided for in Fed. R. Civ. P. 5(b)(2).
>
> (3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and the party, if any, whom the recipient represents.

In reviewing the Proof of Service, the Franchise Tax Board failed to comply with Local Bankr. R. 7005-1(d)(3) and did not provide a list of all the parties who were served nor the email addresses they were sent to. Without this information, the court cannot determine if proper service was provided to all necessary parties.

The Trustee and the Debtor have both provided responses and the court can construe such responses as a waiver of the service defect. As for the other parties in interest, the court construes Debtor's non-opposition as her consent to the dismissal.

APPLICABLE LAW

Dismissal

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson),* 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and

if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Injunctive Relief

Federal Rule of Bankruptcy Procedure 7001(7) requires that injunctive relief be obtained through an adversary proceedings. This provides the parties with all of the normal litigation protections and procedure, including Federal Rule of Civil Procedure 65, which is incorporated into Federal Rule of Bankruptcy Procedure 7065. As stated in 2 Collier on Bankruptcy, 16th Edition, ¶ 105.03[4], "Courts have been near universal in reversing injunctions which have been issued without compliance with Rule 7001." *State Bank of S. Utah v. Glenhill (In re Glenhill)*, 76 F.3d 1070, 1080 (10th Cir. 1996); *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995); *Wedgewood Inv. Fund, Ltd. v. Wedgewood Realty Group, Ltd (In re Wedgewood Realty Group, Ltd.)*, 878 F.2d 693, 701 (3rd Cir. 1989); *In re Martin*, 268 B.R. 168 (Bkcy. E.D. Ark. 2001), affd 271 B.R. 333 (B.A.P. 8th Cir. 2002); *Ramirez v. Whelan (In re Ramirez)*, 188 B.R. 413, 416 (B.A.P. 9th Cir. 1995) (Klein, J, concurring); *Tighe v. Mora (In re Nieves)*, 290 B.R. 370 (Bkcy C.D. Cal. 2003).

Federal Rule of Civil Procedure 65 and Federal Rule of Bankruptcy Procedure 7065 governs the granting of injunctive relief in Adversary Proceedings.

DISCUSSION

First, to address the Trustee's supplemental response concerning service, Local Bankruptcy Rule 7005-1(d) provides the following:

> (d) Method of Service.
>
> (1) Upon Those Parties Consenting to Service by Electronic Means. Service by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E) shall be accomplished by transmitting an email which includes as a PDF attachment the document(s) served. The subject line of the email shall include the words "Service Pursuant to Fed. R. Civ. P. 5," and the first text line of the email shall include the case or proceeding name and number and the title(s) of the document(s) served.
>
> (2) Upon All Other Parties. Service on parties who are not registered users of the Court's electronic filing system or who are registered users but have opted out as provided for in Subpart (b) above must be made in the conventional manner as provided for in Fed. R. Civ. P. 5(b)(2).
>
> (3) Certificate of Service. The certificate of service shall include all parties served, whether by electronic or conventional means. Where service was accomplished by electronic means, the certificate of service shall include the email addresses to which the document(s) were transmitted, and

the party, if any, whom the recipient represents.

In reviewing the Proof of Service, the Franchise Tax Board failed to comply with Local Bankr. R. 7005-1(d)(3) and did not provide a list of all the parties who were served nor the email addresses they were sent to. Without this information, the court cannot determine if proper service was provided to all necessary parties.

However, in light Trustee and the Debtor have both provided responses and the court construing such responses as a waiver of the service defect, the court will waive the defects for purposes of the instant Motion.

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). The Debtor, Trustee, and the Franchise Tax Board all agree that the grounds stated by the Franchise Tax Board is sufficient cause to dismiss the case. The failure of the Debtor to timely file tax returns and the payment of taxes as required by Local Bankr. R. 3015-1(b)(4). Therefore, the Motion is granted and the case is dismissed.

As to the Franchise Tax Board's request that the court issue a bar on the Debtor from re-filing for one-year, the request is denied. First, the Franchise Tax Board is asking for an injunction, which pursuant to Fed. R. Bankr. P. 7001, requires an adversary proceeding. Second, the Franchise Tax Board fails to cite any specific statute that authorizes the court to issue such injunction. The Franchise Tax Board cites a Eastern District of California case which stood for the proposition that § 105 allows for the court to issue such injunctive orders. In re Velasques, No. 12-18079-B-13, 2012 WL 8255582, at *1 (Bankr. E.D. Cal. Dec. 29, 2012). However, that decision was within the context of an adversary proceeding – not on a Motion to Dismiss. Therefore, procedurally, the case cited by the Franchise Tax Board properly requested the injunction in the context of an adversary proceeding unlike in the instant case where the Franchise Tax Board requests such relief in the Motion.

Therefore, the request for the one-year bar is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Franchise Tax Board having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.
>
> **IT IS FURTHER ORDERED** that the request for a one-year injunctive bar on the Debtor from re-filing a bankruptcy case is denied without prejudice.

33. 15-25094-E-13 ALEX/MICHELE MARTINEZ
MWB-3 Mark Briden

MOTION TO VALUE COLLATERAL OF BENEFICIAL CALIFORNIA, INC.
2-27-16 [86]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor, Chapter 13 Trustee, and Office of the United States Trustee on February 27, 2016. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

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

The Motion to Value secured claim of Beneficial Financial I, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of $0.00.

The Motion to Value filed by Alex and Michele Martinez ("Debtors") to value the secured claim of Beneficial Financial I, Inc., successor by merger to Beneficial California Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2725 Sandstone Drive, Anderson, California ("Property"). Debtor seeks to value the Property at a fair market value of $180,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property

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

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

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed by Beneficial Financial I, Inc. is the claim which may be the subject of the present Motion.

The senior in priority first deed of trust secures a claim with a balance of approximately $185,312.00. Creditor's second deed of trust secures a claim with a balance of approximately $18,340.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments in the secured amount of the claim 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 Alex and Michele Martinez ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Beneficial Financial I, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 2725 Sandstone Drive, Anderson, 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 $180,000.00 and is encumbered by senior liens securing claims in the amount of $185,312.00, which exceed the value of the Property which is subject to Creditor's lien.

34. 15-25094-E-13 ALEX/MICHELE MARTINEZ MOTION TO CONFIRM PLAN
MWB-4 Mark Briden 2-27-16 [81]

Final Ruling: No appearance at the April 26, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2016. By the court's calculation, 59 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g). Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

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

Alex and Michele Martinez ("Debtor") filed the instant Motion to Confirm the Amended Plan on February 27, 2016. Dckt. 81.

TRUSTEE'S OPPOSITION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on April 8, 2016. Dckt. 91. The Trustee objects to confirmation because the Debtor's plan relies on the Motion to Value Collateral of Beneficial California.

DISCUSSION

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

On April 26, 2016, the court granted the Debtor's Motion to Value Collateral of Beneficial California. As such, the Trustee's objection is overruled.

With no outstanding objections remaining and upon the court's own independent review of the plan, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

holding that:

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 6, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.