

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

April 28, 2015 at 3:00 p.m.

1. **13-32506-E-13 RICHARD EADDY MOTION TO SELL**
 RJ-3 Richard L. Jare 4-7-15 [[40](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 7, 2015. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

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

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell

property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

a. 8205 Weyburn Court Sacramento, California

The proposed purchasers of the Property are Hue Vo and Thang Le and the terms of the sale are:

1. Purchase Price is \$215,000.00.
2. The payoff figure for Debtor's First Deed of Trust with Bank of America is \$164,000.00.
3. The estimated closing statement indicates that the Debtor will receive \$25,302.29 from the sale. The Debtor is proposing to keep these funds for relocation costs.
4. To implement the proposed First Modified Plan, Fidelity Title will disburse \$8,211.44 to the Trustee from the sale.
5. Fidelity Title will be paying unavoidable liens on the Property which includes the Bank of America First Deed of Trust, the utilities liens, and realtor commission.

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

Here, the Debtor is seeking to sell the Property for \$215,000.00. The court previously granted the Debtor's Motion to Avoid Lien of Cach LLC. Dckt. 46. The proposed sale provides that Fidelity Title will use the sale proceeds to pay the Bank of America First Deed of Trust, utilities liens, and the broker's fee. The Debtor is requesting that they keep \$25,302.29 of the sale proceeds to pay for relocation costs, down payment for possible replacement housing, car repairs and auto replacement, clothing replacement, and furnishing replacements. However, the Debtor does not provide any authority to support the Debtor receiving such a large sum from the sale rather than it being disbursed to the Trustee for distribution to creditors under the plan.

The Debtor has not provided sufficient evidence as to justify the Debtors receiving a windfall of \$25,302.29 from the sale of the Property at the expense of the Debtors' creditors through the proposed plan.

While the court will not approve the Debtors receiving proceeds from the sale, the remaining terms of the sale appear to be in the best interest of the Debtors, creditors, and the estate. The sale price is reasonable and provides for the payment of liens on the Property - with the exception of the judgment lien of Cach, LLC.

The court has granted the motion to avoid the lien of Cach, LLC, such avoidance of the lien is subject to the condition that the Debtors' bankruptcy case not be dismissed. 11 U.S.C. § 349(b); Order, Dckt. 47. If this bankruptcy case is dismissed, then the judgment lien is reinstated on the property. No provision is made for this lien or the possibility that the buyer

may be acquiring the property to this lien which pre-dates the proposed purchase.

Cach, LLC has filed the following proofs of claims in this bankruptcy case:

Proof of Claim No. 8, filed December 18, 2013:

An unsecured claim (relating to account 2265) in the amount of \$7,911.44, for which Bank of America, N.A. was the original creditor.

Amended Proof of Claim No. 9, filed February 8, 2015:

An unsecured claim (relating to account 1448) in the amount of \$5,076.72, for which Bank of America, N.A. is identified as the original creditor.

In the Motion to Avoid Lien (Dckt. 30), Debtor alleged that Cach, LLC has a judicial lien securing a judgment in the amount of \$7,152.32. The court cannot determine whether that debt is one of the ones described in Proof of Claim 8 or 9, or another debt owed to Cach, LLC.

Debtor has not sought, and the court cannot order (out of hole cloth) the sale of the property free and clear of the Cach, LLC lien. No relief has been requested pursuant to 11 U.S.C. § 363(f), nor has Cach, LLC been provided with notice that its contingent lien rights (11 U.S.C. § 349(b)) are the subject of judicial proceedings.

However, the court can, and does order, that the lien, if any, of Cach, LLC which is the subject of the Order Avoiding Lien, Dckt. 47, attach to the net proceeds from the sale, after payment of the secured claims and costs of sale, which are estimated to be \$25,302.29 in the same extent, validity, and priority as existed in the property being sold. The net proceeds from the sale shall be disbursed directly from escrow to the Chapter 13 Trustee, who shall hold said monies pending further order of the court. If the bankruptcy case is dismissed, the Chapter 13 Trustee (or successor trustee) shall notify Cach, LLC of the dismissal and that the Trustee is holding monies subject to the judicial lien. It appears that the \$25,302.29 in net proceeds should be sufficient to pay the judgment secured by the judgment lien if this case is dismissed. If Debtor completes the Plan, the Trustee or Debtor may seek a further order for distribution of the monies to (1) Debtor to the extent of any exemption and (2) to creditors through the Chapter 13 Plan.

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

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

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

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

IT IS ORDERED that the Richard Eaddy the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Hue Vo and Thang Le or nominee ("Buyer"), the Property commonly known as 8205 Weyburn Court Sacramento, California("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$215,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit F, Dckt. 43, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Chapter 13 Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen (14) days of the close of escrow the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
5. The Avoided Judgment Lien of Cach, LLC (Order, Dckt. 47) attaches to the net proceeds of the sale, the amount of sales proceeds after payment of the authorized senior liens, taxes, and costs of sale, and attaches to such proceeds in the same amount, extent, and validity in which the avoided lien existed in the Property. Said net proceeds from the sale of the Property be disbursed directly from escrow to the Chapter 13 Trustee, who shall hold the monies pending further order of the court.

2. [15-20008](#)-E-13 VICTOR ABRIAM
SBT-1 Susan B. Terrado
CASE DISMISSED 4/4/15

MOTION TO CONFIRM PLAN
3-2-15 [[30](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

The case having previously been dismissed, the Motion is Confirm as moot.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

Robert Slama ("Debtor") filed the instant Motion to Confirm the Amended Plan on March 17, 2015. Dckt. 35.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 28. The Trustee objects on the following grounds:

1. Debtor is \$1,225.00 delinquent in plan payments.
2. Debtor's plan may not be the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is above median income. Debtor's supplemental Schedule I (Dckt. 34) lists net income of \$4,884.85, which is \$2,659.85 more than the proposed plan payments.

3. The interest to general unsecured creditors in the plan is only 0.09% pursuant to Section 6 of the proposed plan. The creditors are being asked to wait 60 months for payment and an interest rate of 0.09% has been proposed which is below the national prime rate.

DISCUSSION

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

The Trustee's objections are well-taken. First, the Debtor's delinquency under the proposed plan is evidence of the Debtor's inability to comply with the plan and to make all payments under the plan as required by 11 U.S.C. § 1325(a)(6). This is an independent ground to deny confirmation.

The Trustee's second and third objection concern whether the Debtor's proposed plan is, in fact, the Debtor's best efforts. A review of the Debtor's schedule and Form 22C shows that the Debtor has a net disposable monthly income of \$4,806.36. The proposed plan provides for monthly payments of \$1,225.00 for 60 months, paying 100% to unsecured creditors at an interest rate of 0.09%.

11 U.S.C. § 1325(b) provides, in relevant part:

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan--

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Here, the Debtor is proposing to use only approximately 25% of his disposable monthly income which means that the Debtor must provide for the present value of the claim at the effective date of the plan. The proper methodology of determining the interest rate for 11 U.S.C. § 1325(b)(1)(A) is the "formula approach." *In re Braswell*, No. BR 13-60564-FRA13, 2013 WL 3270752, at *4 (Bankr. D. Or. June 27, 2013) (citing *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004)). Here, the proposed interest rate of **0.09% does not provide for the present value of the unsecured claims. Therefore, the proposed plan is not the best effort of the Debtor.**

To the extent that Debtor believes that coming to court at the hearing and offering to raise the interest rate to a reasonable present value calculation amount, if the Chapter 13 Trustee or creditor caught the attempt to use a virtually non-existent annual 0.09% interest rate for this Debtor who's monthly income is sufficient to pay creditors in full well short of 60 months, that strategy was ill-founded. As the court has explained before, the

provisions of Rule 9011 and federal judicial process is not one in which defective plans and pleadings can be filed to try and "game the system," with a party doing what is required only if "caught." For the court to condone such conduct (whether inadvertent or intentional by experienced, knowledgeable bankruptcy counsel), the court would then be creating a bonus system for violating the Bankruptcy Code. While the court could issue Orders to Show Cause and determine what monetary and non-monetary sanctions should be ordered, as well as referring the matter to the District Court for consideration of punitive sanctions, it is better in this type of situation to deny the motion and allow the debtor and counsel to learn from preparing a new plan, motion to confirm, and the new adequate supporting evidence. Presumably, the new plan, with a reasonable interest rate and payment terms will dissipate any stench of bad faith by the Debtor in the presentation of the current plan and prosecution of this bankruptcy case.

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.

4. [10-33522-E-13](#) JOHN/ANN LAMMON
HLG-1 Kristy A. Hernandez

CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
2-18-15 [[92](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 18, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is ~~xxxxxxx~~.

The Motion to Approve Loan Modification filed by John and Ann Lammon ("Debtor") seeks court approval for Debtor to incur post-petition credit. CitiMortgage, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$1,716.37 for sixty months then \$1,903.22 for 203 months. The modification will reduce the interest rate to 2.00% for the first 60 months then 3.98% for 203 months. The modification will capitalize the pre-petition arrears into the new principal balance of \$496,059.56.

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

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on March 2, 2015. Dckt. 97. The Trustee states that he has no objection to the terms of the loan modification. However, the Trustee is uncertain the loan modification agreement is being offered by the party who is the owner or holder of the existing note and, if it is not, the Trustee is not certain what authority the party offering the modification has to offer it.

The Debtor filed a copy of the Loan Modification which lists Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 as Lender. Dckt. 95, Exhibit C. However, on schedule D, the Debtors list the creditor of the first mortgage being Creditor. Creditor filed Proof of Claim No. 4 on July 22, 2010 claiming a secured claim in the amount of \$508,983.39 and \$27,280.65 in arrears. Attached to the Proof of Claim No. 4 is an Assignments of Deed of Trust from Mortgage Electronics Registration Systems, Inc. as nominee for Lehman Brothers Bank, FSB, a Federal Savings Bank to Creditor.

A Notice of Assignment of Claim and Transferee Notice of Payments was filed on December 16, 2013 from Creditor to Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1. Dckt. 85. The assignment states "Transferee does hereby give notice to the Court that it has accepted to be the servicing agent and/or beneficiary through an assignment and transfer of the real estate property included in the claim for the above referenced debtors from CitiMortgage, Inc."

The Trustee is uncertain whether Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 is actual the creditor or if it has the authority to enter into a loan modification. The Assignment merely states that Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 is accepting to be "servicing agent and/or beneficiary" without specifying what rights it may have.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 28, 2015. The court ordered the Debtors to file and serve supplemental pleadings on or before April 17, 2015.

DISCUSSION

No supplemental pleadings have been filed in connection with the instant Motion.

The Trustee's objection is well-taken. A review of the Proof of Claim No. 4 shows the Assignment to Creditor but does not have any evidence of the transfer of rights from Creditor to Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1. While Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 is listed as the "Creditor" on Proof of Claim No. 4, the claim itself still lists Creditor as the creditor. Furthermore, the Notice of Assignment of Claim and Transferee Notice of Payments merely states that Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1 has accepted servicing rights but not what rights it has to exercise any sort

of modification on the underlying mortgage.

On April 21, 2015, a "Transfer of Claim Other Than For Security" was filed in this case. Dckt. 114. It appears that Fay Servicing, LLC purports to be acting for Christina Trust, as transferor, and executing the Transfer form for Christiana Trust. The Transfer further states that the Note is transferred to an entity named "Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as owner trustee for GFT Mortgage Loan Trust 2015-GFT1, by **Fay Servicing, LLC, its servicing agent.**"

This form causes the court great concern. It appears that the name of the Transferee is not correct, as the words "by Fay Servicing, LLC, its servicing agent" are stated to be part of the transferee's name. More significantly, it appears that Fay Servicing, LLC is executing documents on both sides of a transaction, quite possibly without there being any substantive significance to the statements. No actual assignments have been filed. No evidence exists that either Christiana Trust or Wilmington Savings Fund Society, FSB have any knowledge of what Fay Servicing, LLC is doing. FN.1.

FN.1. The fiction that servicing companies don't do anything wrong, either inadvertently or intentionally, has been dispelled by the various legal and regulatory actions taken and judgements and orders entered against them. Most recently, Green Tree Servicing, LLC has agreed to pay \$63,000,000.00 in consumer compensations and fines for that servicing company's conduct in settlement of an action brought against it by the Federal Trade Commission and the Consumer Financial Protection Bureau. U.S. Dist. Ct. Minn, Case No. 15-2064; April 21, 2015 CFBP Press Release, [http://www.consumerfinance.gov/newsroom/cfbp-and-federal-trade-commission-take-action-against-green-tree-servicing-for-mistreating-borrowers-trying-to-s](http://www.consumerfinance.gov/newsroom/cfbp-and-federal-trade-commission-take-action-against-green-tree-servicing-for-mistreating-borrowers-trying-to-save-their-homes/)ave-their-homes/.

The original Notice of Assignment of Claim, Dckt. 85, states that the claim had been assigned to Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1." This name is different than just "Christiana Trust. The court will not guess whether the different words used in the most recent Notice is merely inadvertence or intentional because the entities are not the same. Further, if Christiana Trust is merely a division of Wilmington Savings Fund Society, FSB, then how can it be transferring claims to itself?

It appears that rather than honestly, truthfully, and consistent with the obligation of a party in federal court, rather than accurately identifying the creditor, this loan servicer is creating "documents" to create that there are multiple parties transferring the claim in bona fide, commercially reasonable transactions.

This conduct has now caught these poor consumer debtors between the questionable representations and the requirement that the court make sure that the real parties in interest are before the court and that all parties purporting to appear are doing so in good faith.

The court will not issue "maybe effective" orders modifying the terms of a loan to only later have the real creditor come and state that they never approved such modification. Christiana Trust, a Division of Wilmington Savings

Fund Society, FSB, as Trustee for GFT Mortgage Loan Trust, Series 2013-1; Christiana Trust, and Wilmington Savings Fund Society, FSB, not in its individual capacity but solely as owner trustee for GFT Mortgage Loan Trust 2015-GFT1, by Fay Servicing, LLC, its servicing agent have chosen to do nothing more than file a single sheet of paper signed by Ciro A. Mestres, the "Transferee's Agent" attesting under penalty of perjury that the information in the Notice of Transfer is true and correct. Ciro Mestres relationship to whomever is the creditor is not stated on the Notice. In running an internet search, a Ciro Mestres is identified as an associate attorney with the Aldridge Connors, LLP law firm in Atlanta, Georgia. On that law firm's website, Ciro Mestres is stated to be an associate attorney who practices bankruptcy law, having obtained his JD in 2008 and admitted to the Georgia Bar in 2010. <http://www.aclawllp.com/attorneys.html#M>. There is nothing in this description or documents filed by which Ciro Mestres would have personal knowledge of the transfer of the claim (See Fed. R. Evid. 601, 602) to state under penalty of perjury of the transactions by the Christiana Trust and Wilmington Savings Fund Society, FSB (in its various capacities). FN.2.

FN.2. The bankruptcy judges in this District have addressed the situation on several occasions with attorneys who purported to provide testimony under penalty of perjury when they had no personal knowledge of such "facts." Instead, it was convenient for them to make the statements because it allowed their client to prevail. The court will have to consider whether this is a situation where the attorneys, including the senior partner responsible for overseeing the conduct of Ciro Mestres, to respond to an order to show cause and appear to explain these statements made under penalty of perjury.

The Debtors having not filed any supplemental pleadings showing which creditor is the true creditor, the court **xxxxxxx**.

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

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

The Motion to Approve the Loan Modification filed by John and Ann Lammon 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 **xxxxxxx**.

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

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

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

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

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

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

The Motion to Extend the Automatic Stay is granted.
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Marlou and Charles Hodge ("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. 2012-23646-C-13C) was dismissed on April 1, 2015, after Debtor requested dismissal pursuant to 11 U.S.C. § 1307(b). See Order, Bankr. E.D. Cal. No. 12-23646, Dckt. 123, April 1, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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

362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed in order to cure post-petition arrears through the filing of a fresh Chapter 13 case, which is the most likely avenue to guarantee success of a Chapter 13 Plan and save Debtors' home. The Debtors state that their adult children are now able to contribute to the family expenses and that the children have agreed to pay any shortfall in the budget until such time as Debtors are able to meet their own expenses.

Furthermore, Debtors have a reasonable probability of success in that they have submitted a Chapter 13 Plan and a budget showing their ability to fund a Chapter 13 Plan. See accompanying Plan, Budget, Declaration of Debtors, and Declaration of Debtors' Adult Children. See Dckt 14 and Dckt. 15.

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.

6. [15-22730](#)-E-13 CHARLES/MARYLOU HODGE
SS-2 Scott D. Shumaker

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
4-14-15 [[18](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 14, 2015. By the court's calculation, 14 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 -----
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<p>The Motion to Value secured claim of Wells Fargo Bank, N.A. as Trustee for SRMOF II 2011-1 Trust ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$00.00.</p>
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The Motion to Value filed by Marlou and Charles Hodge ("Debtor") to value the secured claim of Wells Fargo Bank, N.A. as Trustee for SRMOF II 2011-1 Trust ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 9964 Nestling Circle, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of \$264,000.00 as of the petition filing date. As the owner,

Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$366,162.84. Creditor's second deed of trust secures a claim with a balance of approximately \$69,870.73. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Marlou and Charles Hodge ("Debtor") having been presented to the court, and

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. as Trustee for SRMOF II 2011-1 Trust secured by a second in priority deed of trust recorded against the real property commonly known as 9964 Nestling Circle, Elk Grove, 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 \$264,000.00 and is encumbered by senior liens securing claims in the amount of \$366,162.84, which exceeds the value of the Property which is subject to Creditor's lien.

7.	<u>15-22730</u> -E-13	CHARLES/MARYLOU HODGE	MOTION TO AVOID LIEN OF CHASE
	SS-3	Scott D. Shumaker	BANK USA, N.A.
			4-14-15 [23]

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

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

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

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

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

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

hearing -----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of JPMorgan Chase Bank, N.A. ("Creditor") against property of Marlou and Charles Hodge ("Debtor") commonly known as 9964 Nestling Circle, Elk Grove, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$32,061.53. An abstract of judgment was recorded with **Sacramento** County on May 10, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$264,000.00 as of the date of the petition. The unavoidable consensual liens total \$366,162.84 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code §703.140(b)(5) in the amount of \$1.00 on Schedule C.

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

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of JPMorgan Chase Bank, N.A., California Superior Court for Sacramento County Case No. 34200900049749, recorded on May 10, 2011, Book 20110510 and Page #0619 with the Sacramento County Recorder, against the real property commonly known as 9964 Nestling Circle, Elk Grove, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. [09-44333](#)-E-13 ALLAN/KATHRYNE WINSLOW MOTION FOR COMPENSATION FOR
GW-2 Gerald L. White GERALD L. WHITE, DEBTORS
ATTORNEY(S)
3-27-15 [[65](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 27, 2015. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion for Allowance of Professional Fees is granted.

Gerald L. White, the Attorney ("Applicant") for Allan and Kathryne Winslow the Debtor ("Client"), makes a Second Interim and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period August 15, 2011 through March 17, 2015. Applicant requests fees in the amount of \$2,245.00.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

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

(II) necessary to the administration of the case.

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

Benefit to the Estate

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

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

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

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

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including correspondences with Client and secured creditors over the reconveyance of the deeds of trust and services necessary to achieve discharge for the Client. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a raw time sheets for the services provided, which are described in the following main categories. FN.1.

FN.1.

The court finds helpful, and in most cases essential, for professionals to provide a basic task billing analysis for the services provided and fees charged. This has long been required by the Office of the U.S. Trustee, and is nothing new for professionals in this District. The task billing analysis requires only that the professional organize his or her task billing. The more simple the services provided, the easier is for Applicant to quickly state the tasks. The more complicated and difficult to discern the tasks from the raw billing records, the more evident it is for Applicant to create the task billing analysis to provide the court, creditors, U.S. Trustee with fair and proper disclosure of the services provided and fees being requested by this Professional.

Included in the motion is Applicant's raw time and billing records, which has not been organized into categories. Rather than organizing the activities which are best known to Applicant, it is left for the court, U.S. trustee, and other parties in interest to mine the records to construct a task billing. The court declines the opportunity to provide this service to Applicant, instead leaving it to Applicant who intimately knows the work done and its billing system to correctly assemble the information.

The requirement for a task billing analysis is not new to this district and was required well before the modern computer billings systems. More than 20 years ago a bright young associate (not the present judge) developed a system in which he used different color highlighters to code the billing statements for the time period for the fee application. General administrative matters were highlighted in yellow, sales of property in green, adversary proceedings in red, and so on. Subsequently, the billing procedure advanced so that each adversary proceeding was provided a separate billing number so that it would generate a separate billing. Within the bankruptcy case billing number the time entries were given a code on which the billing system could sort the entries and automatically produce a billing report which separates the activities into the different tasks.

However, in light of the minimal amount requested in the Motion, this defect is waived. The court notes that Applicant should not rely on the court in the future to perform such services.

General Case Administration: Applicant spent 1.8 hours in this category. Applicant assisted Client with finalizing the Chapter 13 case by making sure § 1328 certificates were submitted and reviewing the Trustee's Final Report.

Deed of Trust Administration: Applicant spent 5.7 hours in this category. Applicant communicated with holders of the deeds of trust concerning reconveyance, Trustee's Final Report, and necessary matters to complete the Chapter 13 case.

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
Applicant	7.4	\$300.00	\$2,220.00
Applicant, reduced rate	.1	\$250.00	\$25.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$2,245.00

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

Application	Interim Approved Fees	Interim Fees Paid
First Interim	\$4,675.00	\$876.00
Total Interim Fees Approved Pursuant to 11 U.S.C. § 331	\$4,675.00	

Costs and Expenses

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

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Second and Final Fees in the amount of \$2,245.00 and prior Interim Fees in the amount of \$4,675.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid from the \$1,612.50 held in trust by the Applicant for attorney fees and costs and the remaining by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The Applicant also requests authorization for any additional fees of a "currently unknown amount" pursuant to the Chapter 13 Retainer Agreement as may be needed after the entry of the Discharge of Debtor and the closing of the case. The court will not speculate as to whether any fees for post closing enforcement of the Debtor's rights requires court approval.

Costs and Expenses

The prior Interim Costs in the amount of \$274.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid from the \$1,612.50 held in trust by the Applicant for attorney fees and costs and the remaining by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Fees	\$2,245.00
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pursuant to this Application and prior interim fees of \$4,675.00 and interim costs of \$274.00 as final fees pursuant to 11 U.S.C. § 330 in this case.

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

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

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

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

Gerald L. White, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$ 2,245.00,

The Fees and Costs pursuant to this Applicant, and Fees in the amount of \$4,675.00 and costs of \$274.00 approved pursuant to prior Interim Application are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Chapter 13 Debtor is authorized to be pay the fees and costs from the \$1,612.50 held in trust by the Applicant for attorney fees and costs and the remaining by the Chapter 13 Debtor from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

No other relief granted.

9. 15-21739-E-13 MILDRED/DAVID PRIEGO
VVF-1 Sally C. Gonzales

OBJECTION TO CONFIRMATION OF
PLAN BY AMERICAN HONDA FINANCE
CORPORATION
3-17-15 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 42 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 -----
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The court's decision is to overrule the Objection.

American Honda Finance Corporation ("Creditor") opposes confirmation of the Plan on the basis that the proposed plan does not provide for the full secured claim of the Creditor, as stated in the Creditor's Proof of Claim No. 1. FN.1.

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

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response to the instant Objection on April 22, 2015. Dckt. 26. The Trustee states that the Debtors' plan proposes to cram the Class 2 claims of automobiles. Debtors' plan is proposed to pay \$1,253.00 for 18 months and \$1,353.00 for 42 months to complete in 60 months paying unsecured creditors no less than 4%. Based on the plan terms proposed, there is sufficient proceeds to pay both auto claims in full without any cram-down or modification of the loans and still complete timely.

DISCUSSION

The plan states that the amount claimed by the Creditor is \$15,422.00 and that the value of creditor's interest in its collateral is \$13,650.00. However, a review of the claims register shows that the Creditor filed a Proof of Claim No. 1 on March 24, 2015, listing a secured claim of \$15,102.66.

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.

Under the terms of the plan, when there is no order valuing the claim, the Proof of Claim filed by the creditor controls. Dckt. 5, § 2.04. Here, the difference between the value of the claim listed on Proof of Claim No. 1 and the value given in the proposed plan is \$1,452.66. As the Trustee notes, the proposed plan allows for the full payment of the Creditor's claim with no need to cram-down as indicated by the Debtors' valuation in the proposed plan. With the general unsecured claims to receive no less than a 4% dividend and with approximately \$150,000.00 in unsecured claims, the additional \$1,452.66 that would be included if the Debtors did attempt to value the claim would be *de minimus* and end up causing the same net result.

In light of the fact that the Debtors' proposed plan would allow for the full payment of the Creditor's claim, even when corrected to the full amount listed on Creditor's proof of claim, the objection is overruled.

After the Debtors correct the claim amount for the Creditor to reflect the \$15,102.66 and state in the order confirming that the monthly payment to Creditor shall be amortized for the claim amount over the life of the plan, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 the Objection is overruled, Debtor's Chapter 13 Plan filed on March 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the claim amount for the Creditor to reflect the \$15,102.66 and state in the order confirming that the monthly payment to Creditor shall be amortized for the claim amount over the life of the 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.]

10. 13-31441-E-13 DOREEN GASTELUM
PGM-4 Peter G. Macaluso

MOTION TO MODIFY PLAN
3-19-15 [[51](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2015. 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 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 19, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

11. [14-24955-E-13](#) ANTOINETTE TRIGUEIRO
DPC-1 Sally C. Gonzales

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-18-14 [[31](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 18, 2014. 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.

The court's decision is to sustain the Objection to Confirmation.
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The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor failed to appear and be examined at the First Meeting of Creditors held on June 12, 2014. The Debtor is required to attend the meeting under 11 U.S.C. § 343 and the Debtor has not presented any evidence to the Court as to why she failed to appear. The Meeting was continued to July 17, 2014 at 10:30 am.

The Trustee confirmed at the hearing the Debtor attended the continued First Meeting of Creditors.

Trustee also argues that while the plan proposes to pay the attorney \$500.00 through the plan under LBR 2016-1(c), the Disclosure of Compensation of Attorney for Debtors appears to list in item #7 that the attorney services do not include some services required under LBR 2016-1(c), such as relief from stay actions. The Trustee believes that the Attorney is effectively opting out of 2016(c)(1) and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

Lastly, the Trustee states the Debtor has not filed her tax returns during the 4-year period preceding the filing of the Petition. The Internal Revenue Service filed a claim on May 21, 2014 (Claim #1), which shows that no returns were filed for 2010, 2011, 2012 and 2013. The Franchise Tax Board filed a claim on June 17, 2014 (Claim #2), which shows no returns were filed for 2010, 2011 and 2012. See 11 U.S.C. §§ 1308 & 1325(a)(9).

JULY 22, 2014 HEARING

The Debtor and Trustee requested a continuance to allow the IRS to process the Debtor's recently filed tax returns.

SEPTEMBER 16, 2014 HEARING

The hearing was again continued to allow Debtor more time to file the necessary documents.

NOVEMBER 18, 2014 HEARING

The court has reviewed the docket for this case and it does not appear that the Debtor has filed her most recent tax return documents. The Debtor must file her tax returns in order to confirm a plan. 11 U.S.C. § 1325(a)(9).

On November 11, 2014, Debtor filed a Reply directing the court to review the Amended Proofs of Claim filed by the Internal Revenue Service (Proof of Claim No. 1) and Franchise Tax Board (Proof of Claim No. 2). While the Franchise Tax Board amended proof of claim does not state that there are unfiled returns, the Internal Revenue Service still asserts that the Debtor failed to file her 2010 federal tax return. The federal tax claims are filed in the amount of \$9,363.86 as a priority claim and \$212,494.35 as a general unsecured claim. It appears that the Internal Revenue Service has used a \$10,000.00 amount as a placeholder for the 2008 and 2010 tax years for which it states that no federal returns have been filed.

Though the hearing was continued for another 63 days, Debtor has not resolved with her CPA the missing 2010 tax return. No testimony is provided by the CPA stating that the 2010 tax return was prepared and filed. No appropriately redacted copy of a 2010 tax return is provided.

The court continued the hearing to January 27, 2015 at 3:00 p.m. Dckt. 43.

JANUARY 27, 2015 HEARING

At the hearing Debtor's counsel advised the court that the IRS is filing an amended Proof of Claim showing that all tax returns have been filed. However, the Debtor and CPA requested additional time to address the amount of the IRS Claim. The Trustee agreed to a continuance. In light of the this, the court continued the hearing to 3:00 p.m. on April 28, 2015. Dckt. 46.

DISCUSSION

No supplemental pleadings have been filed in connection with this matter, indicating tot the court that the Debtor still has not resolved the missing 2010 tax return.

After giving the Debtor ample opportunity to figure out the discrepancy with the missing 2010 tax return, it appears that no resolution has yet been reached.

Therefore, the Trustee's objection is well-taken and the Debtor has failed to file the 2010 tax return as required by 11 U.S.C. §§ 1308 & 1325(a)(9). 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.

12. [14-30959](#)-E-13 KENNETH/FRANCINE YATES
RWF-1 Robert W. Fong

MOTION TO CONFIRM PLAN
3-9-15 [[39](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2015. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 9, 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.

13. [14-31363](#)-E-13 AARON/MARIA MAREADY MOTION TO CONFIRM PLAN
GDC-3 Guy David Chism 3-13-15 [[62](#)]

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 13, 2015. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

Aaron and Maria Elena Maready ("Debtors") filed the instant Motion to Confirm the Amended Plan on March 13, 2015. Dckt. 62.

IMPROPER SERVICE TO INTERNAL REVENUE SERVICE

Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1
Notice Requirements**

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a) above;
and,
- (3) Internal Revenue Service at the addresses specified on the
roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
Bankruptcy Unit
P O Box 212126
Philadelphia, PA 19114

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 7, 2015. Dckt. 76. The Trustee objects on the following grounds:

1. Debtor cannot afford to make the payments or comply with the plan because the plan relies on the Motion to Value Collateral of Wells Fargo Home Mortgage. 11 U.S.C. § 1326(a)(6).
2. The Debtors are \$4,997.56 delinquent in plan payments.

DISCUSSION

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

The Trustee's objections are well-taken. While the Debtors' Motion to Value the Collateral of Wells Fargo Home Mortgage was granted on April 14, 2015 (Dckt. 83), the Debtors' delinquency in plan payments is an independent ground to deny confirmation. The failure to be current in plan payments is evidence of the Debtors' inability to comply with the terms of the plan as required by 11 U.S.C. § 1326(a)(6).

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

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

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

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

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

14. [10-25465](#)-E-13 LUCILLE/ALEXANDER CARIGMA
SS-9 Scott D. Shumaker

MOTION TO MODIFY PLAN
3-24-15 [[158](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 24, 2015. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

Lucille and Alexander Carigma ("Debtors") filed the instant Motion to Confirm the Modified Plan on March 24, 2015. Dckt. 158.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 168. The Trustee objects on the following grounds:

1. The Debtors are \$1,887.00 delinquent under the proposed plan.
2. The Trustee has been provided with receipts which the Trustee calculated to total approximately \$83,966.40. The receipts include five plan payments before the period (\$9,435) but exclude four house payments that the Debtor asserts were made (+\$11,584.18) which totals include \$86,115.58. The Debtors

submitted a lump sum payment of \$11,000.00 posted on January 14, 2015. The Trustee calculates a total of \$2,884.42 of the \$100,000.00 of life insurance proceeds is unaccounted for, only 2.9% of the total. The Trustee does not oppose the modification on the basis of the insurance proceeds.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor Alexander Carigma filed a reply on April 14, 2015. Dckt. 171. The Debtor states that he has attached additional documentation regarding the expenditure of insurance proceeds. The Debtor notes that because his children were helping out financially, all the monies cannot be traced. The Debtor states that he cannot find the receipt for the \$2,500.00 balance due to King Wah Restaurant. The Debtor states he paid a \$500.00 deposit on February 8, 2014 and paid the balance in cash on or around February 9, 2014. About 150 friends and relatives attended the dinner to pay their respects of the Debtor's deceased spouse. The Debtor states that all income from all sources, including the insurance proceeds, were spent on necessities, medical care, and funeral-related costs.

DISCUSSION

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

The Trustee's objections are well-taken. As to the Trustee's second objection, a review of the receipts provided for by the Debtor in connection with the insurance proceeds, in light of the Debtor admitting that it is all the information he was able to collect, shows that the Debtor had spent the missing funds on what appears to be the funeral dinner. Based on the representations by the Debtor, it appears that this resolves the Trustee's second objection.

However, the Debtors' delinquency remains, which is an independent ground to deny confirmation. The Debtors' delinquency is evidence of the Debtors not being able to comply with the proposed plan as required by 11 U.S.C. § 1325(a)(6). With no evidence being provided that the Debtor is current, the Trustee's objection is sustained.

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

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

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

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

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

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

Samuel and Ethel Smith ("Debtors") filed the instant Motion to Confirm the Modified Plan on February 10, 2015. Dckt. 64.

TRUSTEE'S OBJECTIONS

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 26, 2015. Dckt. 71. The Trustee objects on the following grounds:

1. The Trustee is uncertain of the Debtors' ability to pay. The Debtors are currently delinquent \$20,960.00 under the terms of the plan confirmed March 8, 2011. Payments under the confirmed plan are \$3,275.00. The Debtors are proposing to increase the plan payment to \$4,515.00 in the modified plan. The Debtors' declaration does not address how or when the delinquent payments of \$25,475.00 were spent.

The last payment received from the Debtors was \$4,515.00 posted February 25, 2015.

2. The Proof of Service states that "EXHIBITS IN SUPPORT OF MOTION TO MODIFY PLAN AFTER CONFIRMATION" were served. The court docket did not include the updated Schedule I and supplemental Schedule J. Only the exhibit cover sheet was filed. The Debtors then filed but did not serve the supplemental Schedule I and J on February 12, 2015. Dckt. 70.
3. Section B 2.06 reports attorney was paid \$1,000.00 and that Debtor's attorney will seek court approval. Debtor's original attorney of record was paid \$1,000.00 prior to the filing of the case. An additional \$2,400.00 was paid through the plan pursuant to Local Bankr. R. 2016-1(c). The current attorney fee arrangements should be included in Additional Provisions.

DEBTORS' REPLY

The Debtors filed a reply to the Trustee's objections on March 17, 2015. Dckt. 74. The Debtors request a continuance to allow them time to reply to the Trustee's objections namely to: (1) allow for a more detailed explanation to supplement the declaration; (2) allow for proper notice; and (3) clarification in the order the attorney fees received prior to filing of the case.

MARCH 24, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 28, 2015 to allow the Debtors the opportunity to file supplemental declarations to address the Trustee's objections. Dckt. 78.

DEBTORS' SUPPLEMENTAL REPLY

The Debtors filed a supplemental reply on April 13, 2015. Dckt. 79. The Debtors state that they are elderly and have mobility issues and are therefore requesting an additional continuance.

DISCUSSION

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

The Trustee's objections are well-taken. While the Debtors request an additional continuance, the Debtors were served the Trustee's objections nearly three weeks prior to the Debtors filing their first request for continuance. The objections of the Trustee all go to whether the plan is feasible and whether the plan provides for creditors in light of the Debtors financial reality.

As noted at the first hearing, the Debtors' "picked this fight" by filing the motion to confirm. Most of the objections raised by the Trustee should have been preemptively addressed in the motion and evidence filed in support of the motion. The court, in fact, explicitly noted at the prior hearing that "Debtors and Debtors' counsel should be more thorough in providing evidence in support of their motions, as the court may not find additional continuance requests justified." Dckt. 76.

The Debtors, now having had the Trustee's objections for over eight weeks, once again request a continuance to provide information that should have been provided for at the time the instant Motion was filed. The court does not find good cause to continue this hearing for a second time.

Addressing the merits of the Trustee's objections, it appears that the Debtors remain delinquent. Failing to be current in plan payments under the proposed plan indicates that the Debtors cannot comply with the plan as required by 11 U.S.C. § 1325(a)(6).

The Debtors still have not filed the supplemental Schedules I and J nor have the Debtors filed any supplemental information on the attorneys' fees arrangement. Without this information, the court and Trustee cannot determine the feasibility or viability of the plan due to the Debtors failing to provide all necessary information for the court to understand the Debtors' financial reality.

Merely because the court denies confirmation of this proposed modified plan does not kick Debtors out of the bankruptcy case. Debtors and counsel can hit the reset button, prepare a new plan, prepare a new motion, prepare sufficient declarations, assemble sufficient evidence, and file it all and seek confirmation. Rather than the court setting a deadline, these elderly debtors with mobility issues may work at their own reasonable pace to assemble the documents, rather than "being rushed by the court."

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 16, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

Kenneth and Sharon Melikian ("Debtors") filed the instant Motion to Confirm the Amended Plan on March 12, 2015. Dckt. 33.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 47. The Trustee objects on the grounds that the Debtors may not be able to make the plan payments. The Debtors plan relies on the Debtors receiving an inheritance from the Debtor's father. The Debtors anticipate receiving the inherited funds before the end of 2015. The Debtors do not indicate a specific amount or project a date that the inheritance will be paid into the plan. While the Debtors supplemented their Schedules to include the inheritance and the life insurance benefit, the Debtors have failed to provide any specifics or documentation that will allow the Trustee to verify details about the inheritance. If the inheritance is not received, the plan will complete in 137 months.

DISCUSSION

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

The Trustee's objection is well-taken. The proposed plan relies heavily on the Debtors receiving the inheritance and life insurance proceeds. However, as stated by the Trustee, the Debtors have not provided any documentation or information to verify the funds or documentation that allows the Trustee to monitor the payment of the inheritance. A review of the proposed plan and the additional provisions show that the Debtors do not provide an alternative if the inheritance is not received before the end of 2015. Without this information, the court nor the Trustee can determine the feasibility or viability of the plan that relies on the Debtors receiving the inheritance. This raises concerns over whether the Debtors can, in fact, comply with the plan if the inheritance is not received, as required by 11 U.S.C. §1325(a)(6). Therefore, the Trustee's objection is sustained.

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

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

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

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

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

17. [10-35278](#)-E-13 RODNEY/SHEILA BORGESON

STATUS CONFERENCE RE: ENTRY OF
DISCHARGE OF DEBTORS
3-27-15 [[94](#)]

Debtors' Atty: Earl J. Hickman

Notes:

Specially set by order dated 3/27/15 [Dckt 94]. Debtor Rodney James Borgeson, Earl J. Hickman, Esq., and Brandon Scott Johnson, Esq. to appear in person, *no telephonic appearances permitted*. Chapter 13 Trustee to file and serve a status report on or before 4/6/15. Responses to the status report and additional information for the court to consider to be filed and served on or before 4/21/15.

Status Report filed by Trustee 4/7/15 [Dckt 97]

Order Allowing Substitution of Counsel [for Rodney James Borgeson only] filed 4/16/15 [Dckt 99]

18. [14-31993](#)-E-13 DAVID/ROWENA ABBOTT
SJS-2 Scott J. Sagaria

MOTION TO CONFIRM PLAN
3-11-15 [[36](#)]

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 16, 2015. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

David and Rowena Abbott ("Debtors") filed the instant Motion to Confirm the Amended Plan on March 11, 2015. Dckt. 36.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 7, 2015. Dckt. 42. The Trustee objects on the ground that the February 2015 plan payment is not clear. The Additional Provisions state that "Debtors have paid a total of \$200.00 to the trustee through February 25, 2015. Commencing February 25, 2015 monthly plan payments shall be \$240.00 for the remainder of the plan." The Trustee believes that the Debtors could propose payments of \$515.00 through March 10, 2015, and then \$240.00 per month commencing March 25, 2015 for the remainder of the plan.

The Trustee also notes that the plan marks that there are not additional provisions appended to the plan yet there is a Section 6 attached. The Trustee also states that the Additional Provisions should be identified as section 6.01, not section 6.

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 Additional Provisions of the proposed plan contains ambiguities as to what the February 25, 2015 payment should be. Based on the language, the court agrees with the Trustee that the Debtors meant to state that the Debtors will pay \$515.00 in plan payments through March 10, 2015 and \$240.00 per month beginning March 25, 2015 for the remainder of the plan. This ambiguity appears to be a mere scrivener's error which can be corrected in the order confirming. Furthermore, the Trustee's concerns over the Additional Provisions, namely the plan properly indicating that there are additional provisions and that the section be numbered "6.01," can be corrected in the order confirming as well.

Therefore, after the February monthly payment is corrected to \$515.00 through March 10, 2015 and then \$240.00 per month beginning March 25, 2015 for the remainder of the plan and the Additional Provision is correctly numbered in the order confirming, there are no further objections.

Therefore, after the corrections in the order confirming, 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 March 11, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, correcting the February monthly payment to \$515.00 through March 10, 2015 and then \$240.00 per month beginning March 25, 2015 for the remainder of the plan and correctly numbering the Additional Provision as "6.01," 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.

19. [15-21293](#)-E-13 GARY BITTERS
DPC-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-2-15 [[17](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2015. 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 -----
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The court's decision is to sustained the Objection.

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

1. Debtor is \$1,725.00 delinquent in plan payments to the Trustee to date.

2. The Debtor cannot make the payments under the Plan or comply with the Plan under 11 U.S.C. §1325(a)(6). The Debtor proposes to value the secured claim of Carmax Auto Finance on a 2008 Honda Civic, but has failed to file a Motion to Value Collateral to date.

DISCUSSION

The Trustee's objections are well-taken. The Debtor is delinquent in plan payment. The Debtor does not provide any evidence or response to show that he has cured this delinquency. Failing to make plan payments is an independent ground to deny confirmation, pursuant to 11 U.S.C. § 1325(a)(6).

As to the Trustee's second objection, the Debtor has filed a Motion to Value Collateral of Carmax Auto Finance on April 2, 2015 and is set for hearing on May 5, 2015. Dckt. 21.

While the Trustee's second objection may be cured following the hearing on the Motion to Value, the Debtor's delinquency in plan payments is a ground to deny confirmation.

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

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

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

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

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

20. [15-22094](#)-E-13 RL/AMY WARD
MWB-1 Mark W. Briden

MOTION TO VALUE COLLATERAL OF
JP MORGAN CHASE BANK
3-23-15 [[9](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Value secured claim of JP Morgan Chase Bank ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$00.00.</p>
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The Motion to Value filed by JR and Amy Ward ("Debtor") to value the secured claim of JP Morgan Chase Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 6749 Airport Road, Redding, California ("Property"). Debtor seeks to value the Property at a fair market value of \$94,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent**

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

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

OPPOSITION

Creditor has not filed an opposition.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately \$131,281.04. Creditor's second deed of trust secures a claim with a balance of approximately \$20,567.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank secured by a second in priority deed of trust recorded against the real property commonly known as 6749 Airport Road, Redding, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$94,000.00 and is encumbered by senior liens securing claims in the amount of \$131,281.00, which exceeds the value of the Property which is subject to Creditor's lien.

21. [13-30998](#)-E-13 RALPH SETTEMBRINO MOTION TO MODIFY PLAN
MET-3 Mary Ellen Terranella 3-17-15 [[49](#)]

Final Ruling: No appearance at the April 28, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 17, 2015. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Modified Plan to 3:00 p.m. on May 19, 2015.
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Ralph Settembrino ("Debtor") filed the instant Motion to Confirm the Modified Plan on April 14, 2015. Dckt. 62.

TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on April 14, 2015. Dckt. 62. The Trustee objects on the following grounds:

1. Debtor has failed to file a Motion to Avoid Lien of Credit Bureau Associates. Credit Bureau Associates is provided in the plan in the amount of \$641.00 at 0% interest and \$0.00 monthly dividend in Class 2C. However, the creditor has filed a secured claim court claim #3-1 in the secured amount of \$640.59. The creditor's claim is not provided for in the plan confirmed October 16, 2013.
2. The Debtor has not filed supplemental Schedules I or J in support of the plan. Trustee notes the proposed Plan includes Class 4, a monthly contract installment of \$1,850.00 for rental property. The Debtor's Schedule I filed on August 21, 2013 reports rental income of \$1,370.00 with a monthly mortgage payment on Schedule J of \$1,370.00. Almost two years has elapsed since the last budget filed by the Debtor. If Debtor's mortgage payment on their rental property has increased \$480.00 and no other expenses have decreased or their income has not increased, Debtor will not be able to afford the Plan payments.

DISCUSSION

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

The Trustee's objections are well-taken. The Debtor has filed a Motion to Avoid Lien of Credit Bureau Associates on April 19, 2015 which is set for hearing on May 19, 2015. Dckt. 66. Due to the interconnectedness of the Motion to Avoid Lien and the instant Motion, the court continues the hearing to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Motion to Avoid Lien. This also provides the Debtor the opportunity to file supplemental schedules to reflect any changes in expenses concerning the renal property.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is continued to 3:00 p.m. on May 19, 2015 to be heard in conjunction with the Motion to Avoid Lien of Credit Bureau Associates (Dckt. 66).